

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-

Docket No. 75-6079

6079

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY
OF NEW YORK,

Plaintiffs-Appellees,

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICE-
SHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING
CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants-Appellants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

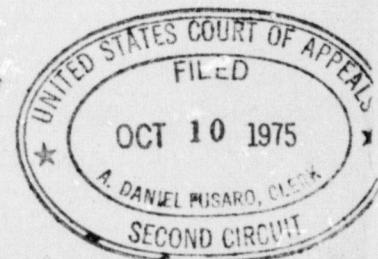
LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.



On Appeal From The United States District Court
For The Southern District of New York

JOINT APPENDIX - Volume 3 of 4

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October 10, 1975

PAGINATION AS IN ORIGINAL COPY

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Zwerling-direct

2 Norway.

3 I guess it was about 1957 or thereabouts
4 when Carrier finally relinquished under pressure from
5 competitors who had developed a similar type of induction
6 equipment, they were finally forced to give up the fabrica-
7 tion of the round pipe and all of the contractors that
8 were doing this type of office building work started to
9 manufacture and install their own pipes.

B2 10 Q Mr. Zwerling, what kind of duct work is
11 used for high pressure air conditioning systems?

12 A Round, rectangular and flat oval, depending
13 upon the space availability, the amount of air. There are
14 some contractors, contract restrictions of what can be
15 used and where.

16 Q Mr. Zwerling, do you know what blowpipe work
17 is?

18 A Yes.

19 Q What is the basis of your knowledge?

20 A Having done blowpipe work over the years,
21 that is part of the normal part of our work. Blowpipe
22 work involved in some jobs we taken was exclusively a
23 blowpipe.

24 Q When you say you have done, are you referring
25 to the companies you referred to prior as having been the

connected with?

A Yes.

Q What kind of blowpipe has your work done?

MR. BOGEN: Objection. At this time I don't think there is any definition by Mr. Zwerling as to what is blowpipe or what is meant by blowpipe that is a critical issue.

THE COURT: Yes.

Q Mr. Zwerling, what is blowpipe work?

A Actually the term blowpipe is a misnomer. It is a catchall name.

I would put it in the same category as that being used in the industry as tin knockers. We stopped using tinsplate in the sheetmetal industry before I was born, but yet sheetmetal workers are called tin knockers.

Blowpipe work covers a whole area of industrial material handling, exhaust work, where the motivating power is air.

Blowpipe work can be done in any shape duct work, round or rectangular or oval and so on.

By the way, it is used for the removal of dust, particles. As a matter of fact it is used for conveying food if it can be conveyed by air and so on.

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Zwerling-direct

2 Q What kind of blowpipe work has your company
3 done?

4 A We have done -- I remember years ago we did
5 blowpipe work going back into the late 1940s. At that
6 time the work that we did was in industrial plants that
7 involved installing high pressure exhaust systems to
8 comply with the State Labor Law for the removal of grits
9 from grinding operations and in some cases removing wood
10 shavings in shaving plants and ducts situated into cyclones
11 with the cyclone collectors, which is basically a separator
12 for the air and the solid medium being removed.

13 Q What type of worker in your company has done
14 this type of work?

15 A Local 28 men.

16 MR. BOGEN: In place of time, the last time
17 we had was going into the late 1940s. I ask that the
18 time be specified as to when this was done or when the
19 work was done.

20 THE COURT: I think so.

21 Q What type of worker did this type of work
22 that you described in the 1940s?

23 A Local 28 men.

24 Q Have you done similar work or have you done
25 any blowpipe work since the 1940s?

1 arjw 9
2 A Yes. We have done some in recent years.
3 We completed a very sizable job at Brookhaven National
4 Laboratories, it must have been I would say within the
5 last ten years.

6 The drafting and fabrication was done by
7 Local 28 men, the installation was done under the super-
8 vision of a Local 23 man, but with Local 55 men in the
9 field.

10 It happened to be a very exotic type of
11 blowpipe work, acid removal and in this particular system
12 if you hit the duct with a hammer, it would cause the
13 building to blow up.

14 Q Was this job done outside the City of New
15 York?

16 A Yes, at Brookhaven.

17 Q Mr. Zwerling, do you know if there is any
18 other blowpipe work done in the City of New York other
19 than that done by your company?

20 A Yes.

21 Q Have you had occasion to see that work?

22 A Yes.

23 end t

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1 jksr

Zwerling - direct

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Q Do you know if there are any differences between that work and the work performed by the Local 28 members for your companies?

MR. BOGEN: Objection, your Honor.

THE COURT: I will let him answer.

MR. BOGEN: We haven't identified what work he saw. He said he saw some work. He identified a job back in the forties and he identified a job he just completed in the ten years.

I don't know what two things he is comparing. I don't think the record would indicate.

I just want to make it as clear as possible, your Honor. I think the question, in comparing it, has not identified the two items to be compared, the earlier items to be compared.

THE COURT: Ask him what jobs he has seen, what they consisted of. Then you have a basis.

Q What jobs have you seen blowpipe work that were not done by your company?

A I've seen over the years on alteration work where we have been called in to buildings, I have seen numerous jobs. It's so many years and so many jobs. There are very few streets in the City of New York that we can walk where we haven't done some work. If you want a specific

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2 jksr

Zwerling - direct

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2
3 list, I do need a little more time to go through the list.
4 But it is done on a continuing -- we have done work on
5 a continuing basis. I mean, I just picked two extremes
6 because I didn't want to take up the Court's time.

7 We also have -- we recently did a job, I think
8 it was last year, at the Daily New Plant in Brooklyn.
9 It was an ink removal system. But we did part of it.
10 Part of it, some of the stuff that existed in the building
11 had been done by other contractors.

12 Q I want to direct your attention to the blowpipe
13 work that you have seen that was not done by your company.
14 What type of blowpipe jobs have you seen that were not
15 done by your company?

16 A I have seen industrial plants and woodworking
17 plants and laundries, in chemical plants; I have seen it
18 out in Brookhaven. I have seen a lot of industrial
19 blowpipe work done in plants, industrial plants in Jersey.

20 I left out, in 1960 we did a very big job there,
21 too, for Alcoa.

22 Q Now, what companies have done this blowpipe
23 work that you have seen that was not done by your companies?

24 A A lot of it was done by other companies in the
25 industry. I mean, competitors of mine, Local 28 and
others. The others were done by the blowpipe shops.

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1 3 jksr Zwerling - direct 1070
2 BOGEN: I am going to object to that and
3 ask it be stricken unless he identifies the companies
4 and where and when, your Honor. The witness now has
5 got such numerous information and so bountiful he can't
6 identify where or when.

7 I think to permit him to generalize at this
8 time is incompetent proof as to what the Government is
9 attempting to establish at this time.

10 I ask the answer be stricken and if the matter
11 is pursued, what companies did it, where they did it.

12 THE COURT: I will let the answer stand now
13 and I want him to name one company who is a competitor
14 who has done work.

15 THE WITNESS: Those competitors of mine who
16 have done blowpipe work are National, J. J. Flannery,
17 Brook, Alpine, Consolidated when they were in business
18 did blowpipe work.

19 Duct work is duct work that can be used -- I
20 mean, when you fabricate a duct to a particular type of
21 specification, it can be used for either blowpipe work
22 or for air conditioning or for exhaust or for anything else.

23 Q I want to direct your attention, Mr. Zwerling,
24 to the companies you say you had seen, that had done
25 blowpipe work that you had seen that were in agreement with

Local 400.

A May I --

MR. BOGEN: Objection. At this point I don't believe that the witness has ever mentioned any company he saw, he mentioned now, has an agreement with Local 400.

THE COURT: Sustained.

Q Have you seen blowpipe work done by companies that were not in signed agreement with Local 28?

A Yes.

Q What companies have done that work?

A Manhattan Blower. I don't know if Brooklyn Blower signed up with Local 400. I have seen work done by Brooklyn Blower, and there was another company, one of these blowpipe companies, the name began with an "A". I saw an installation, an air conditioning installation they were putting in on 44th Street.

Q With regard to the companies that you have mentioned, do you know if they have a collective bargaining agreement with a union?

A I know that there is a collective bargaining agreement with the blowpipe -- between the supposed blowpipe industry and Local 400. I do not know which of the companies are in that blowpipe agreement.

Q. Have you had occasion in this work you have described, Mr. Zwerling, to see work done by members of Local 400 in the blowpipe field?

A. I have not seen the work being done, being actually performed, but I have seen it after it was completed.

MR. BOGEN: I am going to object that the answer be stricken.

The answer immediately before this, Mr. Zwerling stated he didn't know which companies had agreements with Local 400.

The next question is whether or not he saw work done by members of Local 400 for an employer.

He then states with respect to that, "I didn't see them do any work, but I saw it when it was completed."

I ask that the answer be stricken unless it is established the basis of Mr. Zwerling's knowledge that this work was done by members of 400.

MR. TUMINARO: Your Honor, there is nothing mutually exclusive. There is not the same thing compared. On the one hand he did say he didn't know what companies. That doesn't preclude his seeing a job and being informed or understanding or knowing that this job was done by members of Local 400. That is a different matter. I don't

1 think there is any reason why, having said the first
2 thing, we can't permit this answer to stand.
3

4 THE COURT: I am leaving the answer stand. I
5 want him to establish how he came to know it was done by
6 400, though.

7 Q Mr. Zwerling, what is the basis of your know-
8 ledge that the work was done by members of Local 400?

9 A In the instance I was thinking about, the job
10 had been done by Manhattan Blower, and I heard yesterday
11 that they were in signed agreement with Local 400.

12 MR. BOGEN: I ask at this time that the matter
13 be stricken unless it is identified as to the time when.
14 If, in fact, Mr. Zwerling's testimony is predicated upon
15 information that he obtained yesterday, there was no
16 statement as to when Manhattan Blower was signed. I
17 don't know when Mr. Zwerling was in the room and when this
18 work was done.

19 THE COURT: Can you identify the job and the
20 time, Mr. Zwerling?

21 Q Mr. Zwerling, can you identify the time and the
22 job that was done by Manhattan Blower?

23 A The job was one of the two Daily News buildings,
24 either the one on 42nd Street that we were involved in or
25 the Daily News Brooklyn plant.

1 The time, I can only tell you the first time
2
3 I was in either one of two plants was in 1957, and I have
4 been going in and out of those buildings since then, so
5 it can't be earlier than 1957. Sometime after 1957, '58,
6 somewhere around there.

3.2am 7 MR. BOGEN: At this time, your Honor, I respect-
8 fully request that the answer be stricken on the basis that
9 the testimony yesterday was that the blowpipe industry
10 wasn't organized if you will until 1966 and based upon the
11 testimony of the Government's witness.

12 In-addition to that, we have not only the
13 identification as the members of 400, which couldn't
14 possibly have come during '57 or '58, you have the
15 statements that he didn't know. It was clearly understood
16 there was no organization by Local 400 of any of the
17 shops, and any of the employers until '66 and thereafter.

18 As a consequence, I ask that the testimony be
19 stricken on the basis this witness is incompetent with
20 respect to that information.

21 MR. ADAMS: Your Honor, in response to that,
22 there is a very clear connection because the testimony
23 yesterday was that they had organized the blowpipe workers
24 in that shop in 1965, therefore they were in the shop,
25 and those are the people we were talking about.

1
2 MR. BOGEN: I will accept the '65 correction
3 to '66. The testimony of this witness is '57, '58,
4 your Honor. That is the point.

5 MR. ADAMS: Your Honor, I think that that is
6 a connection that can reasonably be made. Obviously it
7 may be given some weight by one party and another weight
8 by others, but the testimony yesterday was that there
9 was an organization of the people already working in those
10 shops in that year.

11 THE COURT: I will let it stand, Mr. Bogen.

12 Q Mr. Zwerling, have you had occasion other than
13 the occasions you have described to see blowpipe work
14 done in the City of New York that was not done by members
15 of the Contractors Association in agreement with Local
16 28?

17 MR. BOGEN: I am going to object to this, your
18 Honor. I didn't mind one or two leading questions, but
19 at this point every question except for some pedigree has
20 been leading. I object to this leading, your Honor.

21 THE COURT: I will sustain your objection.

22 Q Mr. Zwerling, do you know if there is blowpipe
23 work that has been done in the City of New York by com-
24 panies other than those in signed agreement with Local 28?

25 MR. BOGEN: Objection, your Honor, for the same

reason.

THE COURT: Sustained .

MR. ADAMS: I don't think that is a leading question, your Honor. I am asking if he has any information.

THE COURT: It can be answered by a yes or a no. I am sustaining the objection.

MR. ADAMS: It is not leading, your Honor.

THE COURT: It certainly is leading.

MR. ADAMS: What is it leading, as to whether he has any knowledge or not. That is not a leading question.

THE COURT: I have made my ruling.

Q Mr. Zwerling, do you know if there are any differences between the work done, the blowpipe work done by companies not in signed agreement with Local 28 and the blowpipe work performed by Local 28 members in your companies?

MR. BOGEN: Objection, your Honor.

THE COURT: What is the objection?

MR. BOGEN: The basis is at this point we have the only description of work he has seen in the blowpipe is 1957, '58, with respect to this one. He hasn't testified except for his own work with the sophisticated removal and the acid removal. I think it is an incompetent witness

at this time to try to get him to qualify the differences, if any, between this work and these people.

He certainly has hardly been qualified at all with respect to blowpipe in all its ramifications, as Mr. Zwerling has testified, and certainly he is in the position to testify to differences between comparing one set of work to another set of work.

MR. ADAMS: Your Honor, Mr. Zwerling has testified there was blowpipe work done outside of the companies in signed agreement with Local 28. At that point I asked the question and we wanted more foundation, but the fact of the matter is that he still has testified that there was work done and that is the question I am asking him.

THE COURT: I am going to overrule the objection. You may answer, Mr. Zwerling.

THE WITNESS: Will you please repeat the question?

THE COURT: Will you read the question back to him, please?

[Question read.]

MR. BOGEN: I raise a further objection, your Honor, by having heard the question read back. We have no question, or the question doesn't relate to 400, which

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2 apparently is what Mr. Adams is trying to establish. It
3 has already been established that Mr. Zwerling doesn't
4 know the companies that are signed with Local 400.

5 As a consequence, the question, this question would be
6 incompetent, particularly, one, it is incompetent because
7 it doesn't relate to the 400, it is irrelevant and
8 immaterial. It is incompetent to request this witness
9 at this time to compare work of the 400 contract was
10 which he claims or states he doesn't know.

11 MR. ADAMS: I am not asking --

12 THE COURT: 400 isn't mentioned in this question.
13 28 is mentioned.

14 MR. BOGEN: That's true.

15 THE COURT: If your objection is that 28 doesn't
16 do blowpipe work --

17 MR. BOGEN: No. With respect to this witness'
18 testimony --

19 THE COURT: -- and consequently it is misleading--

20 MR. ADAMS: We already have testimony they do
21 blowpipe work.

22 MR. BOGEN: I don't quarrel with that aspect
23 of it. You can't clap with one hand, your Honor, in my
24 opinion..

25 He is asked to compare Local 28 to some work done

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2 by blowpipe, by others. That, as far as I am concerned,
3 is immaterial and certainly irrelevant to anything
4 before his Honor in an attempt to establish what Local
5 400 people do or don't do.

6 This witness has already testified he doesn't
7 know who was in signed agreement with 400.

8 THE COURT: That is not his question. He is
9 asking the question as to those people who are not in
10 agreement with 28, not 400.

11 MR. BOGEN: That is my point, your Honor. There
12 is no connection between 400, at this point.

13 THE COURT: I am going to let him try to make
14 a connection.

15 MR. BOGEN: Well --

16 MR. ADAMS: Your Honor, to point out, I think
17 there already is a connection that blowpipe work done --
18 some of the blowpipe work done in the City that is not
19 in signed agreement with Local 28 has been done by the
20 people in Local 400. That connection may be there -- it
21 may be a thick one, it may be a thin one.

22 MR. BOGEN: I will stipulate --

23 MR. ADAMS: That is a point for argument.

24 MR. BOGEN: I will stipulate that, your Honor;
25 that was the testimony yesterday.

1
2 However, you can't at this point, since the
3 witness can't identify which or who did what work at
4 this point, except generally that he has something,
5 he does know 400, it's incompetent and immaterial to
6 establish anything before his Honor.

7 I don't have any objection to this witness
8 testifying what he knows, but he is in generalities,
9 "Yeah, I saw some work. I did this. I don't know who
10 it was. I believe it's this."

11 He is now comparing 28 to people in not signed
12 agreement with 28. That can be done by anybody. It can
13 be done by a building --

14 THE COURT: But the Court recognizes that.

15 MR. BOGEN: I have no further argument.

16 THE COURT: It could be done by steamfitters.

17 THE WITNESS: Sometimes it is.

18 MR. ADAMS: I think maybe we ought to have that
19 question read again for Mr. Zwerling's benefit.

20 THE WITNESS: Please.

21 [Question read.]

22 A Well, there is two ways of answering the question.
23 On a given job, with a detail set of specifications,
24 work done by members of our company or work done by
25 members of any of my competitors in the industry or the

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Zwerling-direct

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Q Now, Mr. Zwerling, have you seen blowpipe work of the nature that you have just described that has been done by companies in New York City not in signed agreement with Local 28?

3

4

5

6

MR. BOGEN: Objection, that was asked and answered before and it is leading.

7

8

THE COURT: Sustained.

9

Q Do any other companies in New York make the type of blowpipe that you have been describing?

10

11

MR. BOGEN: Objection, your Honor, that is the same question just rephrased.

12

13

THE COURT: I will let him answer.

14

A Yes. Blowpipe work can be made by --

15

THE COURT: The answer was yes.

16

Do any other companies make it the same?

17

THE WITNESS: Yes.

18

Q What other companies make that type of blowpipe work?

19

20

A I would say 80 percent of the members of our association make blowpipe work in various forms. We have run into more and more the operating engineers Local 295 getting involved in stuff, Local 400 and to look at the duct work itself, it is impossible unless you have some additional information to determine what was the source

21

22

23

24

25

as stated before.

Q Mr. Zwerling, does the air conditioning, heating and ventilation work require the fabrication of round duct work?

A Yes.

Q Mr. Zwerling, do you know when the blowpipe worker in New York City were organized?

A Yes. I guess it had been going on for about a 10-month period somewhere -- I don't know whether it started exactly in 1965 or the latter part of 1964 and ran through 10 or 12 month period. I think it slopped into 1966. That was the second time. That was when the organization finally took place

But there was a prior attempt at organizing it, indirectly organizing the blowpipe workers in I guess it must have been 1958 or 1959.

Q What was that attempt?

A I had previously mentioned that the Carrier Corporation was finally forced to give up its monopolistic control of the perimeter systems.

There were a lot of members of Local 28, capable members of Local 28 able to step into that work right away. In fact, the work done by Carrier was being done in New York City by Local 28 members.

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2 But we couldn't get to first base with the
3 blowpipe men at that time.

4 Q Mr. Zwerling, directing your attention to the
5 10 or 12 month period that you mentioned, I believe you
6 said maybe in 1965 and possibly 1966 --

7 A Right.

8 Q Did the Contractors Association discuss or
9 give any consideration to the subject of organizing the
10 blowpipe workers at that time?

11 A Yes. There were numerous meetings involved
12 of the Contractors Association because of the problems
13 that were obvious to us.

14 Q What was the position of the Contractors
15 Association?

16 A The Contractors Association did everything
17 in its power and tried every trick it possibly could to
18 convince Local 28 to take the blowpipe industry in its
19 entirety into the structure of Local 28.

20 Q Do you know what the position of the Inter -
21 national Association of Sheetmetal Workers was with regard
22 to the organizing of the blowpipe workers?

23 A Yes, I do.

24 Q What was that position?

25 A I had several conversations with the general

1 president of the International, at the time Edward F.
2 Carlough, formerly president of Local 28.

3
4 It seems that some of the blowpipe men had
5 a desire to become, mechanics had a desire to become
6 organized. It may very well have been an offshoot of
7 what took place in 1957, 1958 when some of the contractors
8 approached some of the men working in the blowpipe shops
9 to see if they would be interested in moving into our
10 phase of the industry to work on permits.

11 Apparently that awakened this whole organiza-
12 tional furor on the part of the men working in the blowpipe
13 industry. They then approached, I was informed by Mr.
14 Carlough, that the blowpipe men were making rounds, they
15 tried to get into Local -- have Local 28 accept them and
16 they were turned down.

17 They tried the carpenters, they tried Local
18 55 and I thought it was the taxi but yesterday Mr. Commarato
19 refreshed my recollection, it was the Teamsters.

20 They finally were negotiating with that
21 time that Edward Carlough said to the Joint Adjustment
22 Board he was not going to permit the loss of the Sheetmetal
23 Workers to the Teamsters, and that if the contractors as
24 a group could not convince the officials of Local 28 to
25 take in the blowpipe industry as such, that he was going

1 to assign them to Local 400.

2
3 Q Mr. Zwerling, what was the position of Local
4 28 with regard to the organization of the blowpipe workers?

5 A There were two positions, the official
6 position and the unofficial position.

7 THE COURT: Let us hear what both of them
8 were.

9 Q Mr. Zwerling, what was the official and what
10 was the unofficial position?

11 A The official position we were told by Mr.
12 Farrell on numerous occasions the Joint Adjustment Board
13 that he is not going to tell us who to take into our
14 firms and we have no right to tell him who to take in as
15 brothers into his Local. In other words, mind our God
16 damn business.

17 Q What was the unofficial position?

18 A The unofficial position, there was a lot of
19 discussion at the time among the contractors. We were
20 aware of what we felt were the reasons for the failure of
21 28, why they were doing it, but at one meeting we had
22 at the Building Trades, Room 2 at the Building Trade
23 Contractors Meeting, we were discussing the 75 foot limita-
24 tion. We wanted Local 28 --

25 MR. BOGEN: I haven't interrupted the witness

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Zwerling-direct

with these questions. The witness was meandering around and discussing these things. The question was the official position of Local 28 and the unofficial position. We had what appears to be the official and the next question is the balance of the response.

THE COURT: What was the unofficial position?

THE WITNESS: I was explaining the circumstances of the unofficial position.

THE COURT: Let us hear the unofficial position?

A The unofficial position as expressed by Mel Farrell, he wanted no part of the members of the blowpipe industry because of the fact they were minorities.

Q What were the circumstances, Mr. Zwerling, surrounding Mr. Farrell's statement that you have characterized as the unofficial position of Local 28?

A There was a meeting at the Building Trades. Present at the meeting were Edward F. Carlough, members of the Joint Adjustment Board, the employer members and I think Mel Farrell and one other, it might have been Sam Cohen were there.

It was an unofficial meeting for the purpose of discussing the draft agreement that had been prepared assigned to Local 400 the blowpipe industry.

1 We complained bi+terly to the International.
2
3 We felt it was a misassignment. We did not want it to
4 happen and we were told by the International they are
5 tired of fighting with Farrell and it got quite heated
6 at one point and a group, small group, myself, one other
7 contractor went out with Mr. Farrell and tried to calm
8 him down, he was blowing his cork and screaming and he
9 said, "Neither the International president or the con-
10 tractors are going to dictate to him and he was not going
11 to take those damn minorities into the Local and doesn't
12 give a damn what anybody thinks."

13 Q Mr. Zwerling, I believe you stated that
14 you were a member of the Joint Apprentice Committee, is
15 that correct?

16 A That is right.

17 Q How long were you a member of the Joint
18 Apprenticeship Committee?

19 A I would say approximately from 1957ish to
20 1964 or 1965, just shortly after the court case was com-
21 pleted, the State Commissioner of Human Rights.

22 Q Mr. Zwerling, when you mentioned the court
23 case, what court case are you talking about?

24 A Where the State of New York in its inestimable
25 wisdom cited myself, the two other employer members and

Adjustment Board meetings, Mr. Zwerling?

A Any subject that can affect the relationship between the parties that are signatory to the agreement is fair grounds to be brought up at the Joint Adjustment Board.

Q Can you enumerate some of the subjects that have been discussed at Joint Adjustment Board meetings since you have been a member?

A There have been all types of grievances, questions of jurisdictional problems, all kinds of manpower problems, a lot of problems we had with the Apprenticeship Committee and the court action that slopped into the JAB. It was discussed there.

Plenty of complaints about non-union work going on in the City of New York, problems we had from that area. I guess there has been very little that has not been discussed, would be the easier way to put it.

Q How do issues of manpower arise?

A Normally each contractor hires his own men by whatever methods he wants to use. He hired Union men through either his foreman or somebody who worked for him before. He gets on the phone and calls him up to find out if he is available or when they will be available.

At times when the bottom of the barrel is

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empty, then the contractors sort of group together and start to scream their heads to the Union and try in every way possible to try to increase the availability of manpower and very frequently the Union does go out of its way to help us to get men, but there is always a big time delay involved there.

Q Mr. Zwerling, have any of the companies that you testified you were connected with made these requests for manpower to the Joint Adjustment Board?

A Yes, both Triangle and ABT have made many requests on many different occasions for manpower in general or specific types of skills.

Q What were the reasons for ABT making manpower requests?

MR. BOGEN: Objection. At this time we haven't identified the time. There was a whole time span we are talking about and I request that the time span be identified.

THE COURT: Yes, fix the time.

Q What period of time did ABT make manpower requests?

A ABT started to go into a manpower bind I guess it must have been in late 1969 and it last through, I guess, about the middle of 1971.

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2 It got extremely critical, I think it was
3 late 1969, somewhere around there, when we were under
4 tremendous pressure, threatened by all kinds of lawsuits,
5 et cetera, for failure to keep up with contracts on the
6 Trade Center.

7 MR. BOGEN: I ask that this matter be stricken
8 with respect to the lawsuits and that type of thing. The
9 question was, when did they have the manpower request and
10 it was given as 1969 to the middle of 1971. It included
11 some remarks the witness threw in the testimony.

12 MR. ADAMS: I was going to ask the question
13 as to why. I asked the question as to when and next I
14 was going to ask for the reason to clarify the situation.

15 THE COURT: You got the reason already.

16 MR. ADAMS: That is right.

17 THE COURT: He wanted to keep on schedule
18 with his contracts.

19 Q Mr. Zwerling, do you recall any specific
20 requests made by Alpine Brook & Triangle?

21 A Yes, we filed a formal complaint with the
22 Joint Adjustment Board which resulted in a meeting on
23 that specific subject of lack of manpower.

24 Q Do you recall when that meeting took place?

25 A August something, I don't know whether 1969 or

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Zwerling-direct

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1970, something like that.

Q Mr. Zwerling, I am handing you what has been marked as Plaintiff's Exhibit 95 in evidence. Will you take a look at that document?

A Yes, I recall this. It is dated -- the meeting was held July 16, 1970.

Q That document refreshes your recollection as to the meeting at which ABT made a complaint to the Joint Adjustment Board?

A Right. That was the date of the meeting.

Q Do you recall how many men ABT requested at that time, without looking at the document?

A Without looking at the document, we had approximately, it must be about 160 men on the job at that time and I think the owner was pushing us to get about another 100 men, the number 100 sticks in my memory. I don't think we wanted quite that much, but somewhere in that range.

Q Will you look at that document to see if that refreshes your recollection, referring now to Exhibit 95?

A We had made a formal request for 130 men.

Q Does this refresh your recollection as to the amount of men that were requested by ABT?

A Our requirements were constantly changing for

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Zwerling-direct

2 several reasons. We started first of a series of requests,
3 starting for 60 men. Not having gotten the 60, if we
4 had gotten the 60 when we wanted them, we would have been
5 out of trouble. Several weeks later it got up to 200 men.

6 Q Mr. Zwerling, did the Union make a response
7 to your request for additional manpower either at that
8 meeting or at a time subsequent thereto?

9 A The Union told us --

10 MR. BOGEN: At this time obviously the witness
11 is reading from the document. I have no objection, but
12 it ought to be established either this is his testimony or
13 his recollection has been refreshed by looking at the
14 document.

15 THE COURT: Yes.

16 MR. ADAMS: I will ask him from his own
17 memory.

18 Q Did the Union at that meeting or sometime
19 subsequent to this meeting make any response with respect
20 to the request made by ABT?

21 A As I recall, an active effort was made by the
22 Union to circularize sister locals to attempt to bring in
23 men from whatever sources they could. At one point they
24 were permitting us to hire men from other trades that
25 were available in New York City like plumbers, plumbers who

2 were available and things of that sort.

3 They did make an attempt to get men for us
4 from other sources but they were very slow in coming.

5 Q Mr. Zwerling, are you aware of any Federal
6 or Local laws requiring that contractors have a certain
7 amount of minority workmen on certain jobs?

8 A Yes, I am aware of them.

9 Q Has the subject of the legal requirement
10 regarding men on jobs been discussed by the Contractors
11 Association?

12 A If I remember correctly, our secretary had
13 sent out half a dozen --

14 MR. BOGEN: I object. The question is, was
15 that a matter of discussion among contractors.

16 THE COURT: Yes.

17 Q Mr. Zwerling, directing your attention to my
18 question which was, was the matter of the legal requirement
19 for minority workmen on certain jobs a matter of discussion
20 among contractors?

21 A Yes.

22 Q Was it discussed at Contractor Association
23 meetings?

24 A Yes.

25 Q Did the contractors take any steps as a result

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Zwerling - direct

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2 BY MR. ADAMS:

3 Q Mr. Zwerling, at the meeting of the Joint Ad-
4 justment Board in August of 1968 did the contractors
5 make a proposal to the union with respect to the minority
6 workers in the trade?

7 A Yes.

8 Q And what was that proposal, if you recall?

9 A The contractors wanted to set up a non-
10 discriminatory hiring committee to comply with the require-
11 ments of the law.

12 Q Mr. Zwerling, I noted that you referred to the
13 document. Are you refreshing your recollection with
14 respect to the answers to the questions I am asking or
15 are you testifying now of your own recollection?

16 A I referred to the document to get the exact
17 wording. I remember the incident from memory.

18 Q What was the response of the representatives
19 of Local 28 at that meeting to the proposal?

20 A They were against it.

21 Q Was the proposal adopted?

22 A No, it was deadlocked.

23 Q Mr. Zwerling, yesterday there was testimony
24 regarding the subject of drafting. Is drafting, to your
25 knowledge, within the jurisdiction of Local 28, within the

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1 2 jksr Zwering - direct 1110
2 work jurisdiction of Local 28?

3 A Yes.

4 Q Do the companies that you are connected with
5 employ Local 28 members who can draft?

6 A Yes.

7 Q Do the companies which you are connected with
8 employ Local 28 men who cannot draft?

9 A Yes.

10 Q What percentage of the members of Local 28 that
11 are employed by your companies, if you know, cannot draft?

12 A I would say the majority of the members of our
13 Local 28 employees cannot draft, but the number has been
14 changing, and I couldn't give you an exact number or an
15 exact percentage.

16 Q Mr. Zwering, since the time that Triangle and
17 ABT have had a signed agreement, through the Contractors
18 Association of Local 28, have Triangle or ABT ever hired
19 a sheetmetal worker who was not a member of Local 28 or
20 who did not have a Local 28 identification card?

21 A Yes.

22 Q Can you identify those people? Where did they
23 come from?

24 A The majority of them came from sister locals of
25 Local 28. In some cases, as I explained before, we hired

1 3 jksr Zwerling - direct
2 non-sheetmetal workers, former plumbers.

3 Q Did these people have an identification card
4 that was issued by Local 28?

5 A Yes, they were given temporary permits.

6 Q That were issued by Local 28?

7 A Yes.

8 Q Did Triangle or ABT ever hire within the time
9 period you have been in collective bargaining agreement
10 with Local 28 a sheetmetal worker who was not a member
11 of Local 28 or who did not have a Local 28 identification
12 card?

13 THE COURT: Identification card is a permit.

14 A I am not sure, but I don't believe so.

15 MR. ADAMS: This is going to be very short break,
16 your Honor, since we have already reviewed it.

17 THE COURT: All right.

18 [Pause.]

19 MR. ADAMS: Your Honor, the Government has no
20 more questions of Mr. Zwerling at this time.

21 THE COURT: Ms. Gross.

22 DIRECT EXAMINATION

23 BY MS. GROSS:

24 Q Mr. Zwerling, you testified before that sometimes
25 when you are looking for manpower you are looking for

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2 CROSS-EXAMINATION

3 BY MR. TUMINARO:

4 Q Mr. Zwerling, you testified that there was a
5 period of time when the contractors in your association
6 were short of labor prior to the organization of the
7 blowpipe industry.

8 Q Could you place that for us as to a year or
9 thereabouts?

10 A There was a severe shortage of labor in the
11 fifties, starting about -- this must have been about '56,
12 lasting through '61. There was another one in the
13 mid-sixties for a short period of time, and then there was
14 another severe shortage starting in the late sixties,
15 about '69 running to --

16 Q By that time, the blowpipe workers were already
17 organized.

18 A Right.

19 Q Let's confine ourselves for the moment to the
20 period, the time before such organization took place.

21 A Right.

22 Q To your knowledge, were there discussions among
23 the contractors regarding workers in the blowpipe industry
24 as to what might be done to get that labor?

25 A Yes.

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Zwerling - cross

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MR. ROGEN: Objection, your Honor.

A There were numerous discussions.

THE COURT: What is the objection?

MR. BOGEN: The objection is as to whether or not there were discussions with the contractors. There may or may not have been. That has nothing to do with Local 28.

THE COURT: I agree, but if there were discussions maybe he can tie it in.

I will take it subject to connection.

A There were numerous meetings starting late '67 that went into--

Q Mr. Zwerling, I am asking you about the period of time prior to the organization of the blowpipe workers, those periods of times when there was a labor shortage. Were there any discussions regarding what might be done?

A Yes, there was a repetitive situation starting about 1957 when the critical shortage of skilled round pipe men developed.

The contractors wanted to discuss the fact that they wanted this group --

Q What group?

A The blowpipe men. We wanted to take them -- we wanted Local 28 to take them into the industry, and we were

1
2 aware of the fact that there were two basic objections
3 on the part of Local 28 to taking them in.

4 Q This goes back to your testimony about the
5 official and the unofficial position, is that what you
6 are referring to?

7 A This goes back further.

8 Q Two basic objections; what were those objections?

9 A There was a particular theme that ran throughout
10 all these years. Local 28 did everything in its power
11 to keep the manpower availability at an absolute minimum, to
12 force overtime in the industry. That was one specific
13 situation.

14 And the other situation, in connection with this
15 particular group, was the fact that they were minorities
16 and they didn't want any part of them .

17 MR. BOGEN: I move to strike the answer, your
18 Honor, unless there is stated a basis. The witness is
19 now generalizing with respect to keeping the manpower down,
20 and that type of thing, and now with respect to the
21 minority situation, I just don't think that -- I ask that
22 that be stricken.

23 MR. TUMINARO: Your Honor, there is a point that
24 I will try to clarify in response to Mr. Bogen's objection
25 as to the basis for this.

THE COURT: You try to clarify it and I will see whether I will strike it or not.

Q As to the issue of minorities, you testified that there was a particular meeting at which Mr. Farrell, it is your testimony, was upset and made certain statements.

So that we can be very clear about this, what minorities were being referred to?

A The minorities that were in the blowpipe industry.

Q Was this a question of color, Mr. Zwerling?

A Yes, I believe so.

Q You say you believe so. How do you know?
What did Mr. Farrell say?

MR. BOGEN: At this point I will object to that, your Honor. We have got testimony what was said, and at this point, as I understand it, this is direct examination. It is either a duplicate or improper examination of this witness at this time.

MR. TUMINARO: Your Honor, I asked what did he say in an attempt to clarify --

THE COURT: The question has been asked and answered as to what Mr. Farrell said.

MR. TUMINARO: I think he paraphrased Mr. Farrell. I wanted to ask the witness whether he recalled

2 specifically what he said.

3 MR. BOGEN: I think in response to something
4 that Mr. Adams asked him, the witness responded to that.

5 THE COURT: I think so, too.

6 MR. BOGEN: I think this is their witness and
7 they are bound by what he said at this point.

8 THE COURT: All right.

9 Q What position, if any , was expressed to the
10 officers of Local 28 regarding the asserted availability
11 of blowpipe workers before the organization of Local 400?

12 A We made it clear to the officials of Local 28,
13 particularly to Mr. Farrell, that these men would solve
14 an immediate problem at that particular time in the late
15 fifties, that we were going to get ourselves into trouble,
16 that if we did not man the industry in accordance with
17 the industry's requirements that people had other ways
18 of doing air conditioning work without using sheet metal
19 work.

20 Q Who were these men that you just referred to?
21 When you say "these men", you told Mr. Farrell that these
22 men could solve this problem; who were they?

23 A The mechanics that were working in the blowpipe
24 industry.

25 Q When you say they are working in the blowpipe

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industry, does that include construction work, shop work, both?

A Both.

Q Have you ever been in a shop, so-called production shop of the blowpipe industry?

A Yes.

Q Have you been in such shops since 1965?

A No.

Q You testified on direct examination by Mr. Adams that members of Local 400 don't just do alteration work. What other kind of work do they do?

A They do installation work.

MR. BOGEN: Objection. The witness has already testified he is unfamiliar, he didn't know which shops were which, and which were members of Local 400. I am objecting to the witness at this time giving testimony with respect to items he has already said he has no knowledge of or he can't tie the two together.

MR. TUMINARO: He didn't say that, your Honor. He said that he knows that there has been work done by blower contractors. He knows that there has been work done by 400, but he said that unless one knew some identifying characteristic of such work, one wouldn't be able to judge the difference just looking at the work,

1 unless one knew the characteristics. That doesn't mean
2 that he said that he didn't know that these people did
3 such work or anything like that.
4

5 MR. BOGEN: The testimony, your Honor, is
6 uncontroverted, that the witness doesn't know which employers
7 have a signed agreement with Local 400 on the one hand.
8

9 Two, he has already stated he has never seen
10 a member of Local 400 blowpipe performing any work. He
11 doesn't know. That combination of factors having been
12 testified to, his now asking the question is improper.
13 It is based upon a combination of those two factors.

14 MR. TUMINARO: Your Honor, the witness testified
15 that Manhattan Blower -- that he saw work that was per-
16 formed by Manhattan Blower, that he knew that Manhattan
17 Blower was in contract to Local 400. That is one example.
18 I mean, if we want to pin it down, I don't think it is
19 fair to say he hasn't testified as to that. I think this
20 is a fair question.

21 THE COURT: I am going to overrule the objection.

22 MR. TUMINARO: Would the Reporter please read
23 back the outstanding question?

24 [Question read.]

25 A They do new work and there were several cases
that we ran into, our company, where they ran in direct

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2 competition with us on new work.

3 Q What case did you run into?

4 A I previously mentioned that we had done the
5 first phase of the sheetmetal installation at the
6 Consolidated Edison atomic plant at Indian Point. There
7 recently are two other phases that were let, that we
8 bid. They were good sized jobs and we lost it to a local
9 400 shop, the Rotodyne, which I know, based upon the
10 few names that I do know, they were one of the shops that
11 we lost.

12 We have also lost work, new work, to some of the
13 production shops, one production shop in particular of
14 Local 400, enclosure work, the Brooklyn Iron & Steel on
15 enclosures, where they bid against us in competition.

16 Q Is it possible that there might be a jurisdictional
17 dispute with regard to this kind of work?

18 A Yes. We felt that it was clearly within the
19 scope of the building construction trades phase of the
20 industry. We felt it should have been settled pretty
21 clearly by the International and awarded to a construction
22 -- a shop affiliated with Local 28 or Local 38 or one of
23 those shops.

24 The same thing was true for the New York Times
25 job. There was no doubt in the minds of our members of

the Association. One of our members is complaining bitterly about the fact that this new work he lost was lost to a Local 400 shop, and then after they said yesterday --

Q What would be the difference, if any, between the work that was done in these cases that you referred to, the work that was done by members of Local 400, and the work that was done or might have been done by members of Local 28 in these particular cases?

A I stated --

Q Not with respect to jurisdiction, but with respect to the work.

A I stated previously, the specifications on the job govern the construction of the job. On a plant like the atomic plant, there is no doubt in my mind that the work would be identical, whether it was done by a Local 400 shop or a Local 28 shop or a Local 38 shop or whatever it is.

MR. TUMINARO: Thank you, Mr. Zwerling.

MR. ROTHBERG: I have no questions, your Honor.

CROSS-EXAMINATION

BY MR. BOGEN:

Q Mr. Zwerling, you testified that for a period of time in the fifties and the second time in the early

1
2 sixties, before '65, your association sought to have
3 Local 28 organize blowpipe, do you recall that?

4 A Yes.

5 Q And at that time who was the president of your
6 association?

7 A In the late fifties I believe it was Julius
8 Storch. In the early sixties it was Fred Munder.

9 Q And during these various times when discussions
10 were had --

11 MR. BOGEN: Withdrawn.

12 Q And at that time your association had a collective
13 bargaining agreement with Local 28, is that correct?

14 A That's right.

15 Q And that provided for certain wages, terms and
16 conditions of employment, is that correct?

17 A That's right.

18 Q And was the position of the association that
19 the blowpipe should be organized at substantially less
20 wages and terms and conditions?

21 A It was not the -- to my knowledge it was not the
22 position of the employers of our association. It was
23 something that they had to give to the employers of the
24 blowpipe industry in order to get them to organize. We
25 did not care if they came in at full wages. Local 28

1 contractors didn't care. But there was no -- this whole
2 discussion about the lesser rate was strictly an offer
3 to induce the employers of these non-union blowpipe shops
4 -- it was my suggestion and the suggestion of others at
5 that time, going back to the late fifties, to eliminate
6 that sort of problem would be just to clean out all the
7 mean, take all the men into 28 and that would stop the
8 problem of the differential rates.
9

10 Q And take them in at differential rates or a
11 cheaper rate, wasn't that the position?

12 A There was never any discussion that I attempted
13 to take in the members of the blowpipe industry into
14 Local 28 on a differential rate.

15 Q Was that the position by the employers in the
16 blowpipe industry?

17 A No, it was not. The blowpipe industry, they
18 wanted a differential rate because they felt they were
19 competing under different conditions.

20 Q So, in fact, there was objection by the blowpipe
21 employers?

22 A Right, but you asked me about 28 employers.

23 Q We will get to 28. And there was an objection
24 to take these men in at a lower rate as far as Local 28
25 is concerned, wasn't there?

MR. TIMINARO: Your Honor, I object. I think there has got to be a clarification on that question as to again who this objection was made by. I think there was a question with respect to 28 people, 28 employers. There is another question with respect to blowpipe employers and now the next question, which doesn't tie to either one of those. I would request --

THE COURT: I think he can answer the question. He made reference to Local 28.

MR. TUMINARO: Is that the question?

A The question is not clear.

Q It is not clear? We will go over it very slow. There came a point in time when you mentioned, starting in the fifties --

A Late fifties.

Q The Association, your Association -- we will call it the Association and refer to Local 28 as 28 and refer to the blowpipe employers, that group, as the blowpipe employers. Is that clear in your mind?

A Right.

Q Did you know about efforts that were being made by the sheetmetal people to organize the blowpipe group in the fifties?

A As far as I know, there weren't any.

Q There came a time when you say the Association and Local 28 sat down and discussed the organization, is that correct?

A No. You're talking fifties now or sixties?

Q In the fifties.

A In the fifties, the discussions that took place in the fifties were to go into the blowpipe industry and clean out them and steal all their men and stop them from competing against us, put them out of business.

Q And at that time the blowpipe employers raised the question -- did they raise the question of the differential rate?

A We didn't care. We had no discussion. We weren't interested in the blowpipe employers at that time. If we had their men, let them go out and train more men. We needed the men. We were willing to pay the wages. There was no discussions at that time whatsoever as far as I know with any blowpipe employer. They were unfair competition to our unionized industry.

Q Then there came a time, you say, in the sixties --

A Right.

Q You say there were discussions had with the union to organize the blowpipe industry, do you recall that?

A Right.

Q At that time, did the blowpipe employers raise a question about paying the construction wages set forth in your agreement with Local 28, referring to your Association?

A I don't --

MR. ADAMS: Is that a question?

THE COURT: I think it is. Let him answer it if he can.

A I don't know of any time, if I understand your question, that our employers, our Joint Adjustment Board had any meetings with the employers of the blowpipe industry. Any contacts that we had with the blowpipe industry were through the International.

Q A little while before you said the blowpipe employers had objections about paying the contract rate, do you recall that, that they had the objection? Do you recall stating that?

A I would assume that would be, yes.

Q Your testimony a little while ago was that you knew that they objected to it; do you recall that, just testifying about five minutes ago?

A Yes, I was told that they objected.

MR. TUMINARO: I object. I don't think that

is a fair characterization of the testimony.

THE COURT: That's all right.

Q And when were you informed that the employers in the blowpipe industry had that objection?

A I guess it must have been in about the time we saw the first draft of -- we were given a copy of the draft by the International, tentative draft of the agreement that was about to be given to the blowpipe industry.

Q And at that time you knew or you were informed that there was an objection to paying the construction rates in the 28 contract with the association, is that a fact?

A That's right.

Q At that time, did 28 voice an objection that they would not organize the blowpipe at a differential or at a different rate?

A Yes.

Q And isn't it a fact that before this time Mr. Fred Munder had a meeting with the International at which he proposed a contract on behalf of your Association at a reduced differential rate?

A I am not aware of any such meeting. It might have taken place.

1 Q That meeting might have taken place?

2 A Right.

3 Q Do you know Mr. Edward F. Carlough?

4 A Yes, very well.

5 Q And if Mr. Edward F. Carlough stated that such
6 a meeting took place and that your Association proposed
7 a contract at a differential rate, would that refresh
8 your memory as to such a meeting?
9

10 MR. TUMINARO: I object, your Honor.

11 THE COURT: Sustained.

12 I sustain the objection.

13 Q Isn't it a fact that there was an effort in the
14 mid-sixties, the sixty drive, to have the blowpipe
15 industry come in and have you perform it at a lesser rate
16 than the construction rate? Is there any question about
17 that, Mr. Zwerling?

18 MS. GROSS: Can we have clarification of the
19 phrase, "perform it"?

20 THE COURT: I don't know what that means.

21 Q To perform the blowpipe work, the work we are
22 talking about.

23 Q I felt the same way in 1967, talking personally,
24 the same way in 1967 that I felt in 1957. I felt that
25 these people were in competition with us. Either they would

1
2 come into the industry on a basis that was equally
3 competitive with us or let's clean out their men; one
4 of the two.

5 Q You stated that is your personal position.
6 Was the position of the Association different at that
7 time in '60?

8 A No. There were a lot of members of the
9 Association that felt just as strongly. We wanted the
10 men.

11 Q In addition to wanting the men, did you want
12 or was it the Association's position that they wanted a
13 contract with the differential rate?

14 A Well, on all of these things it is always a
15 matter of compromise that comes somewhere along the line.
16 I know that industrial work per se is done at a differen-
17 tial rate throughout the United States.

18 Q And that is what you wanted, your Association
19 wanted that cheaper rate, isn't that right?

20 A Our Association didn't want the cheaper rate.
21 We might have -- Fred Munder might have suggested this,
22 and I am guessing now. He might have wanted it in order
23 to resolve the problem and get the men to 28 because we
24 knew if once we had them under control of 28 we would have
25 a hell of a lot less problems than we had if they were

independent or with 400.

Q The various meetings that you attended, do you recall the union position, stated time and time again, that they would not organize the blowpipe at a lower rate and have second class citizens? Do you recall that in substance or words?

MS. GROSS: Your Honor, Mr. Bogen seems to be testifying here. Is this the question?

THE COURT: This is cross-examination. He may answer it.

A Would you repeat the question, please?

MR. BOGEN: Would you read it back, please?

THE COURT: Read the question, please.

[Question read.]

A I recall statements made that the blowpipe industry would not be organized at a differential rate, but that gets to the basis of the jurisdiction of what the blowpipe would be. If the blowpipe shops were doing construction work, I would say that they had to pay the full rate, the same as we do. If they were involved in this plant work, renovation in a plant, then they would be entitled to an industrial rate, and I don't think it is as clearcut as this business with second class citizens.

Q Do you recall the union stating that -- whether

1 it is clearcut in your mind -- do you recall the union
2 stating that they wouldn't organize Local 28 on the basis
3 of a differential rate, a lower class rate?
4

5 A I assumed it must have been said at some time.
6 I have heard that statement made. I don't know if it
7 was that particular time, but I've heard that statement
8 made.

9 Q Do you recall Mr. Carlough, during these
10 meetings, saying to you, "I don't think we have a chance in
11 a million years to get the wage rate of New York City
12 in the blowpipe industry"? Do you recall his stating
13 in words or substance that to you?

14 A Yes, I recall hearing something along those lines,
15 but that statement was made in connection with the
16 industrial in-plant work and that was not, had nothing
17 to do with new construction work, that these guys were
18 taken away from us.

19 Q In '66 do you recall Mr. Farrell stating again
20 and again that he wouldn't organize, have separate rates,
21 dual citizenship or dual rates in his union?

22 MR. TUMINARO: Objection, your Honor. He
23 was asked whether the union has said that. He was asked
24 whether he recalled. This is repetitive. Mr. Farrell
25 saying it is the same as the union saying it.

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THE COURT: He can answer.

A As I recall, while that may have been stated many times --

Q How many times was that stated?

MR. TUMINARO: Your Honor, let the witness finish the answer.

THE WITNESS: May I finish?

THE COURT: Finish your answer.

A Dual rates do exist in our industry for a long period of time.

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Zwerling-cross

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2 Q How many times was it stated to you, Mr.
3 Zwerling?

4 A Everything that Mr. Farrell stated in that
5 the meeting was not gospel. We had dual rates in existence
6 in our industry for a long period of time. The Kalamein
7 have different rates, they had them for a long period of
8 time, that there were dual rates. We were negotiating a
9 lower rate, discussing it for a long period of time for
10 residential work.

11 Q You didn't agree with Mr. Farrell when he
12 said he wouldn't take, except a lower rate?

13 A I agreed with Mr. Farrell definitely that he
14 should not accept a differential rate for blowpipe work
15 where new construction was involved.

16 Q What was the position of the Association,
17 that they wanted a differential rate across the board for
18 blowpipe?

19 A I don't think we ever got a chance to discuss
20 it, to bring it down to a point because Local 28's position
21 was so adamant that it was hopeless.

22 Q During this period, do you recall a meeting
23 when it came to a head, you say, and you had to take Mr.
24 Farrell out of the room, he became excited; do you recall
25 that?

1 arjw 2

Zwerling-cross

2 A That is right, we took him out to see if we
3 couldn't convince him in a small caucus.

4 Q In that meeting with the group you were
5 talking about before, the small caucus, did Mr. Farrell
6 insist that he couldn't order and have two rates of pay
7 with respect to blowpipe and the rest of the construction
8 sheetmetal union?

9 A No, the only statement was made when we were
10 out of the room in the back.

11 Q You say out of the room.

12 A In the meeting, that meeting.

13 Q During the meeting in the room, do you recall
14 discussions with respect to the proposal made?

15 A Which discussion?

16 Q The discussion had in the room, Mr. Zwerling.
17 There was a meeting held, do you recall that, in the
18 mid 1960s? Do you recall there was a meeting in a room?

19 A There are 50 meetings held, not one.

20 Q At all these meetings, 50 meetings, what was
21 the position that Mr. Farrell took for the Union at these
22 meetings?

23 A At the meetings he took the position that
24 nobody was going to tell him who he was going to take into
25 the local union.

1 arjw 3

Zwerling-cross

2 Q In addition, did he say he would not accept
3 the blowpipe at a differential rate, a different rate?

4 A No.

5 Q That was never raised?

6 A It may have been raised once toward the end
7 when the pressure was extremely great; at the very, very
8 end after the draft agreement had already been drafted,
9 Carlough presented it to us, we were screaming, we wanted
10 the 75 foot knocked down to 0. The blowpipe employers
11 wanted to run up to 200 feet. The 75 feet was a compromise
12 and they never paid any attention to it anyway.

13 Q You say you recall something about Fred Munder
14 proposing an agreement with a differential or lower rate?

15 MR. ADAMS: I object. He did not say that
16 he recalled it.

17 I think Mr. Bogen, you should rephrase the
18 question.

19 Q Do you recall Mr. Munder during this period
20 of time proposing an agreement at a lower rate, differential
21 rate for your Association?

22 MR. ADAMS: We already had an answer to
23 this.

24 THE COURT: Yes. I will sustain the objection.

25 Q You said during this meeting in which they

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1 arjw 4

Zwerling-cross

2 requested -- who attended the meeting in which you were
3 requested to take Mr. Farrell out in a small caucus?

4 A Mr. Farrell, Mr. Sternberg, I think Mr. Munder.
5 I don't remember whether or not Mr. Flannery was there.
6 He may have been there. Morris Lipka, Eddie Doff. It
7 wasn't the entire Joint Apprentice Board.

8 It was primarily the contractors that were
9 involved in the high-rise buildings. A representative
10 of Universal, possibly Bartman was there.

11 Q Was Mr. Carlough there?

12 A Yes.

13 Q Where did this meeting take place?

14 A Room 2, Building Trades.

15 Q When was it held?

16 A The specific date, no.

17 Q Do you know what year it was held?

18 A It was held after, I can give you the best
19 time frame is after there was a draft agreement set up
20 with, I guess it must have been set up based on the testi-
21 mony yesterday, by Alan Roberts and which we were to review
22 our objections.

23 Our purpose was to let the International know
24 what our objections were and this was a last ditch effort
25 made to convince Local 28 to change its own opinion.

1 arjw 5

Zwerling-cross

2 Q You don't recall the year, is that correct?

3 A No.

4 Q Do you recall the month?

5 A No. The only tie-in I can remember is seeing
6 that document that was prepared, the draft agreement,
7 shortly after that was prepared.

8 Q Do you recall the season of the year?

9 A It was spring or early summer.

10 Q Do you recall the time of day this meeting
11 allegedly took place?

12 A I think it started about 10:00 in the morning
13 and ran until about 2:00 in the afternoon; something like
14 that.

15 Q At that time, to your knowledge, the Inter-
16 national Association had already awarded or assigned this
17 blowpipe group to 400, is that a fact?

18 A It was not finalized.

19 Q What?

20 A It was not finalized, it was assigned.

21 The agreement was not signed, the purpose,
22 the intent was obvious at this point they were going to
23 be assigned.

24 There were two purposes to the meeting. The
25 first purpose , to see what objections the members of our

1 arjw 6

Zwerling-cross

2 Association had to the agreement the way it was written
3 and the damage it would do to our industry, the construction
4 end of the industry.

5 And there was also a second purpose of the
6 meeting, to see if we collectively couldn't generally
7 prevail one final time on Farrell to change his mind.

8 Q The rate provided in the proposed agreement
9 that you reviewed, they were substantially lower rates
10 than the rates of wages provided in 28's contract, is that
11 true?

12 A I don't remember. I didn't look at them.

13 Q You reviewed the agreement, didn't you?

14 A I reviewed those portions of the agreement
15 that were tied in with what they could do in connection
16 with air conditioning work and so on where they would
17 install duct work.

18 Q Do you have any knowledge at all or do you
19 recall anything to do with wages or conditions?

20 A No, I don't recall anything specific. But
21 I would assume they were lower. They would have to be
22 lower for renovation work, like every place else in the
23 country. But on new work --

24 Q How long did your discussion in the room with
25 respect to this take place?

Zwerling-cross

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1 arjw 8

Zwerling-cross

2 subject to tremendous pressure from the International
3 Association, from us, and a lot of people yelling and
4 the meeting get unruly sometimes and it was thought if
5 we got him outside and calmed him down enough maybe we
6 could come to some sort of reasonable settlement. It
7 happens at every session of the Joint Adjustment Board.

8 Q During this particular meeting, in the room,
9 was anything at all whatsoever said about minorities?

10 A No, not in the room.

11 Q That is all I am asking, Mr. Zwerling.
12 You will get to say whatever you want to say.

13 You say you had about 50 meetings during this
14 period of time?

15 A Right.

16 Q That is meetings with Mr. Farrell, with your
17 group, individually and in joint session, is that correct?

18 A Right.

19 Q At any time during any of those meetings,
20 was the question of minorities ever raised or discussed?

21 A Yes.

22 Q Do you have minutes of those?

23 A No. The contractors discussed it repeatedly
24 for two reasons: We felt we couldn't get to first base
25 because of minorities and overtime. It was the unanimous

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2 opinion of the contractors.

3 Q These were discussions that you are talking
4 about which were held exclusively among contractors, is
5 that correct?

6 A In a contractor's caucus and we didn't know
7 how to fight it.

8 Q During the meetings that you had with Local
9 28, at any time, was the question of minorities raised
10 by Mr. Farrell or anybody else on behalf of the Union?

11 A No, Farrell was too cagey at a public meeting
12 when there were minutes to make a statement like that.

13 Q When you say Farrell was too caged, what
14 do you mean?

15 A He was a very cagey guy with what he said
16 when there was a record. He was calm, very, very careful
17 what he said.

18 MR. BOGEN: I ask that the answer to my
19 question stand, but the remark about being cagey be stricken,
20 your Honor. That was gratuitous.

21 THE COURT: I am going to let it stand.

22 Q Now, throughout the 50 meetings or 40 meetings
23 you had, whatever you had, at that meeting where you were
24 requested to take him out, the question of minorities
25 was never discussed with the Union, is that correct?

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Zwerling-cross

2 A That may not be completely correct. At some
3 point, and I don't remember exactly the time frame when
4 we were under pressure, the State Commissioner of Human
5 Rights, I think it was at that time we suggested that
6 by going out and getting these blowpipe men, it was
7 one of the suggestions, it would solve the demand of the
8 State Commissioner of Human Rights and get rid of that
9 problem.

10 I know that was interspersed with these other
11 problems that were starting to develop and we suggested
12 that as an alternative, where they were competent men,
13 experienced men, that we wouldn't have problems with.

14 Q Do you have any minutes of those meetings you
15 are talking about this was discussed?

16 A I don't keep the minutes. Bill Rothberg may
17 have them.

18 Q There came a time when you say during the
19 last meeting we are talking about, where Mr. Carlough
20 suggested you take Mr. Farrell out in the hall or during
21 a caucus; is that correct?

22 A Right.

23 Q You said somebody else was present. You
24 mentioned to Mr. Adams somebody else was present with you?

25 A Right.

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Zwerling-cross

2 Q Who was that?

3 A I think it was Mr. Sternberg at the time.

4 Q Is Mr. Sternberg dead?

5 A Yes.

6 Q Is Mr. Farrell dead?

7 A Yes.

8 Q Is anybody who is alive present when the
9 remark that you expressed on direct before was present?

10 A There are plenty of contractors available
11 who are fully familiar with the statements that were
12 made. They got it directly from similar sources, this
13 was common knowledge in the industry and I am not the
14 only one that has this information.

15 MR. BOGEN: I ask that that answer be
16 stricken as not responsive, your Honor.

17 MR. TUMINARO: I object, I think the answer
18 was responsive. He asked whether anybody else is alive
19 in the industry that knew of these statements and he
20 answered that.

21 MR. BOGEN: That was not the question. The
22 question was whether anyone was alive who was present
23 with respect to the remarks spread on the record.

24 We got the remarks spread on the record here
25 in the presence of two dead men, one attributed to the dead

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Zwerling-cross

2 man and the other man has passed on and I asked him whether
3 anybody is alive besides him.

4 MR. ADAMS: The question was whether anybody
5 is alive and the answer said there are people alive and
6 that it is common knowledge. I presume some of the people
7 are alive.

8 THE COURT: I will let the answer stand.

9 Q Mr. Zwerling, was anyone else present at this
10 out-of-room discussion or caucus that you had besides you,
11 Mr. Sternberg, and Mr. Farrell?

12 A At this particular incident I think only the
13 three of us.

14 There may -- you are familiar with the pro-
15 cedures of the Joint Adjustment Board and there is a meeting
16 with people walking in and out, a caucus begins with two
17 people and there is a constant change in the cast of
18 characters, it is constantly changing.

19 Q Do you recall anyone else being present at
20 that time?

21 A Offhand, no.

22 Q Now, during this period of time you personally
23 were subject, individually and as a principal or trustee
24 of the Joint Apprenticeship Committee, you were involved
25 in a lawsuit involving the question of discrimination and

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Zwerling-cross

2 the Joint Apprentice Committee practices and the Local's
3 practices before the Human Rights Commission?

4 A Yes.

5 MR. ADAMS: That is not correct. I think
6 the testimony was and the record will reflect he was
7 involved as a member of the JAC.

8 MR. BOGEN: On the contrary, your Honor,
9 I refer you to the decision by Judge Markowitz and the
10 opinion of the State Human Rights Commission with respect
11 to this and the individual members of the Joint Apprentice
12 Committee were personally, individually being cited and,
13 in addition, in their representative capacity.

14 As a matter of fact, at the end of Judge
15 Markowitz' decision there is a specific provision dealing
16 with a motion made to exonerate the individuals which he
17 granted in part and reserved in part and that is the basis
18 of my question to Mr. Zwerling now.

19 MR. ADAMS: I just wanted to clarify.

20 THE COURT: Yes. Read the question back.

21 MR. BOGEN: I will restate it, your Honor.

22 Q At the time you say this remark was made in
23 the out-of-room caucus, you personally were involved in
24 an individual capacity and as trustee of the Joint
25 Apprenticeship Committee in a matter in which you were

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2 charged, JAC was charged, with discrimination with respect
3 to the apprentice program and with respect to the 28
4 situation with journeymen, is that true?

5 A No, you are off by a couple of years.

6 The matter with Judge Markowitz was settled
7 I think in 1964 or 1965. Right after the matter was
8 settled I resigned from the JAC. This matter with the
9 other situation took place a year or two years later.

10 It wasn't simultaneous but I was cited as
11 an individual, yes, and I was annoyed with it, mad and
12 angry.

13 Q Mr. Zwerling, you were angry about the
14 situation and you thought that you had nothing to do
15 with the discrimination charge, is that a fact?

16 A That is right.

17 Q As a matter of fact, you asserted a defense
18 that the entire matter was Local 28's responsibility,
19 isn't that a fact?

20 A Just about.

21 Q - As a matter of fact, that was the defense
22 at the State Human Rights Commission and your defense to
23 the Court, that you were completely innocent, didn't
24 know anything about it and Local 28 was responsible; isn't
25 that a fact?

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2 A I don't remember all the details, but I
3 assume that is a fair statement.

4 Q A fair summary of your defense?

5 A I would say it is a fair summary.

6 Q If I suggested that the order issued by Judge
7 Markowitz in this matter occurred in late 1965 to 1966,
8 and as late as 1967, with respect to some aspects of this
9 case, would that refresh your recollection as to when the
10 New York State Human Rights Commission proceeding was taking
11 place?

12 MS. GROSS: For the purpose of clarification,
13 the 1967 aspects of the case had nothing to do with the
14 Joint Apprenticeship Committee but with other matters.

15 MR. BOGEN: On the contrary, your Honor,
16 the matter went to the Court of Appeals and the Appellate
17 Division twice and the matter was directly involved with
18 actions by the JAC with respect to declaring or proposing
19 to declare a test invalid.

20 MS. GROSS: That is correct.

21 MR. ROTHBERG: Mr. Zwerling testified that
22 he resigned as a trustee immediately subsequent to the
23 Markowitz decision and it is not true that in 1965 and 1966
24 and 1967 the Markowitz decision exonerated the individual
25 trustee from any liability of any subsequent decisions.

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2 1966 and 1967 did not go to the question of
3 the individual trustees' liability.

4 MR. BOGEN: I think Mr. Rothberg has stated
5 in summary fashion an accurate statement of what happened
6 but I want to place it in time with Mr. Zwerling.

7 MR. TUMINARO: I object, there is no
8 connection at this point, it is irrelevant.

9 MR. BOGEN: I am going to connect it.

10 THE COURT: I will give you the opportunity.

11 Q Now, when this remark was made by Mr. Farrell
12 as you tell us about it, what did you do about it, having
13 heard a statement of this kind? Did you do anything about
14 it?

15 A Discussed it with the contractors.

16 Q Did you report this in any way to the State
17 Human Rights Commission?

18 A No.

19 Q Did you know though you had resigned from the
20 JAC that Judge Markowitz continued to have jurisdiction
21 over the case after his decision in 1964; do you know
22 that?

23 A Yes.

24 Q You told us that in the discussion in the room
25 that you raised or somebody raised with the Association

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2 THE COURT: Yes, you did. Why don't you
3 ask, did he report to anybody?

4 Q Did you report this to anyone, this remark
5 to anyone after the remark was made as you described it?

6 A The employer members of the Joint Adjustment
7 Board and its attorneys.

8 Q Was this in a caucus?

9	A	Yes
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10 Q Are any minutes kept of that?

11	A	No.
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12 MR. BOGEN: At this time, I ask United
13 States Attorney to produce any affidavits or written
14 statements submitted or taken of Mr. Zwerling with respect
15 to his testimony.

16 MR. ROTHBERG: I don't know what authority
17 Mr. Bogen has to make that request, Mr. Zwerling is my
18 client. What is the basis of that request?

19 MR. BOGEN: Regardless of that he was called
20 as a witness by the United States government and the basis
21 is that I am entitled to get from the prosecution and
22 certainly in a quasi criminal matter under Title 7, I am
23 entitled to receive any affidavits, written statements
24 taken from a witness in terms of inconsistencies, or records.
25 And if it is a question of confidentiality, his Honor can

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2 A Yes.

3 Q What is the difference?

4 A The end result is the same, the differences
5 are in between.

6 Q What are the differences?

7 A The construction of the system, the noise
8 problems, high pressure system has a completely different
9 construction, the fact is a lot of round pipes are used.
10 There is a lot of sound acoustical linings in the casings
11 and duct work. There are sound traps, there might be
12 secondary pressure reducing devices located at some points
13 and ultimately, by the time it gets to each floor, by that
14 point it reaches a low pressure system where distribution
15 is low pressure.

16 Q Are there various ways of distributing the
17 air once it comes into the room or areas to be distributed?

18 A Yes.

19 Q What are those different ways?

20 A They are infinite.

21 Q In general terminology?

22 A There is distribution through the duct work,
23 the simplest thing would be just to have a duct blowing
24 into the room. That would be the simplest type of system,
25 with nothing on it. You can go on from there, any degree

2 of elaboration.

3 You can have a whole network of distribution
4 duct work, a series of registers like you have in this
5 room or a series of difussers, you can have a series of
6 louvers, like the present systems, or outlets and Carrier
7 has a moduline system which are outlet devices.

8 Q Are you finished?

9 A Yes.

10 Q With an outlet just coming out into the
11 area would be the simplest non-complicated distribution?

12 A It is the simplest one.

13 Q The other ways you have described would be
14 a more complicated way of distributing the air?

15 A Complicated from the standpoint of a more
16 expensive way of doing it, because there is more work in-
17 volved.

18 Q In addition to that, would air come through
19 a lighting fixture of any kind?

20 A Yes. There are devices on the market now
21 where air is distributed through lighting fixtures or
22 through specific cracks in the ceiling and so on.

23 Q These various systems for distribution of air
24 there is somewhere along the line where this is sketched
25 by your draftsmen, is that correct?

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A That is correct.

Q After it is sketched by your draftsmen and then coordination with the other trades -- that is correct?

A Right.

Q Ultimately, a fabrication of that as you have described, the various portions and components?

A That is right.

Q Now, with respect to the exhaust systems that we have been talking about under blowpipe, that was basically you told us a removal or moving of some undesirable particle or substance, is that correct?

A Or it could be desirable.

Q Pardon?

A I say in a case of supposed blowpipe used in food handling systems, like we did a job not too long ago for Duncan Hines to move the cake mix by a blowpipe system, out of rectangular duct, stainless steel, where the thing being moved was the concocted dry cake mix.

Q Holding that aside for a minute, have you ever done anything like that before?

A Yes, other types. I mean that is one. There are other things.

Q Let me ask you this, when you speak of industrial exhaust systems, you are talking about the

removal of items, is that a familiar term to you?

A I think --

Q I am just asking you if that is true.

A My analogy was the tinsmiths who don't exist. It is a generic term that covers all types of industrial sheetmetal work basically. IT ties in with paint removal systems, with these food conveying systems. There is a lot of duct work used in flash drying of foods which would be tied in with this also, possibly called blowpipes, but that would be a fancy stainless steel duct work.

Q With respect to the buildings or jobs you talked about, I will discuss each one with you.

You talked with Mr. Adams I believe, you said that 400 or you believed there were 400 employers or members of Local 400 blowpipe doing our work, referring to work under 28's jurisdiction.

Do you recall that?

A Right.

Q Now, it is unclear to me what jobs precisely you were talking about this morning.

Starting with the first time you claim that you saw or believe Local 400 employers were performing your work --

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2 Q You already discussed that that jurisdiction,
3 geographic jurisdiction is not also 28's, is that so?

4 A Right.

5 Q And whose jurisdiction is it, if you know?

6 A Local 38 .

7 Q Do you know if a Local 38 company eventually
8 did that job?

9 A No, I don't know.

10 Q Can we agree that you don't know who did that
11 job?

12 A Other than Rotodyne.

13 Q You don't know if Rotodyne did it either?

14 A Rotodyne had the contract.

15 Q But you don't know whether or not they completed
16 or effectuated the contract, do you?

17 A No, I don't.

18 Q Now, was there any other job that you either
19 mentioned this morning with Mr. Adams or that you recall
20 now which you claim that 400 or a Local 400 shop did
21 your work or 28's work?

22 A I have a whole list of jobs that were not done
23 by Local 28 shops in the City of New York, copies of which
24 I had given to you in the past, some of them. I don't
25 know what the affiliation is of the shops other than the

Local 55 shops that were listed, which might be 400.

I never saw a shop list of Local 400, which might be 295, I don't know. I would assume that it is reasonable that some of them were 400 shops.

Q Can we agree, sir, that you have no personal knowledge of any work other than the three we have talked about now, that 400 performed in jobs or areas where you claim 28 should have had jurisdiction?

A One other job, Brooklyn.

Q Where was that, sir?

A Mytoy, an air conditioning job done by a Local 400 shop. Details on that job you can get from my brother. He is personally familiar with all that.

Q You don't have any information about it?

A Other than it was done by a 400 shop, no.

Q Do you know the name of the shop that was there?

A No.

Q Did you see the work being done?

A No.

Q Did you ever visit the job site?

A No.

Q Do you know anything about the work at all?

A No. Well, other than the fact that it was an air conditioning job done by a 400 shop.

2 is.

3 A Right.

4 Q And you don't know what the curriculum is, is
5 that correct?

6 A Right.

7 Q You don't know if it is taught in the morning or
8 the evening?

9 A Right.

10 Q Do you have any idea as to what work the apprentices
11 do in the Local 400 Blowpipe shop?12 A I have been told by the teacher that the Local
13 400 Training Program is the equivalent or better than the
14 Local 28 Apprentice Program. That was told to me by Tommy
15 Carlough who is involved, directly involved in their
16 problem and is an employe of Triangle Sheetmetal.17 Q Anything else you want to add to that before I
18 move to strike?

19 A No.

20 MR. BOGEN: If your Honor please, I will move to
21 strike as entirely unresponsive to the question.22 MR. ADAMS: Your Honor, that is not true. It
23 is fully responsive to the question that was asked by
24 Mr. Bogen.

25 MR. BOGEN: I don't want to be cute or clever.

questions.

I will withdraw the question.

THE COURT: All right.

Q It is a fact, Mr. Zwerling, that you don't know at this time currently the machinery that is used by Local 400 Blowpipe employers; is that correct?

A I would not say that's correct. I would say anyone who knows the sheetmetal business can pretty well sit down and figure out with a very good degree of accuracy, maybe not by make or brand, but by specific types of machinery, brakes and shears and rolls and beaders and crimpers and soldering and welding and so on, go right down the list and having seen some of their trucks on the road, knowing what their duct work looks like, I think I could pretty well pin down, not by capacity and model number, but pretty good idea.

Q Do you have any idea what size these shops are in Local 400 Blowpipe?

THE COURT: Size? What do you mean, area?

MR. BOGEN: Area.

THE COURT: Or number of employees?

MR. BOGEN: Physical size, area. Excuse me, your Honor.

A I would say --

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Q The only thing as to the Brooklyn address was what appeared on the truck, is that correct?

A That is right, the name of the blowpipe company.

Q You don't recall the name?

A No, other than it began with an A.

Q And except for the legend on the truck you don't know anything about the employees or the work being done, is that correct?

A That is right.

Q I think you said before, I don't want to be repetitive, but I want to continue in sequence, there is no question 28 can do industrial exhaust systems done by 400 blowpipe?

A None whatsoever.

Q You don't have any personal knowledge whether or not Local 400 employees, the members, can do the heating, ventilation and air conditioning, is that so?

A With their skills I would say they could do it, do our work just the same.

Q I asked if you have any personal knoweldge about that?

MR. TUMINARO: I object to the question.

This calls for judgment, whether they can do it. This is

the position taken by --

Before 1969, for periods starting with '69 back were there periods in which there was manpower shortages, in your opinion, based upon your experience in the industry?

A Yes.

Q What periods were they, sir?

A I guess it must have been about the mid, started about the mid-sixties. It was soft in the early sixties. It was very, very tight, from about '61 back to about '57, and before that, there was -- before '57 there was spot shortages of men going back to, as I can recall, to '51.

Q I want to keep it in the segment, Mr. Zwerling, running from '69 -- let's see if we can take it this way: From approximately '66 to '69, would you characterize that period of time as being a period of time in which there was manpower shortages?

A Spot shortages. Spot shortages, not heavy shortages, because during that period of time we were just coming, starting to pick up in the City. Our company was completing a lot of work that we had picked up out of town and we were just starting to come back into this, work was just starting to pick up in the City and manpower requirements were growing in the City.

2 Mr. Commarato.

3 MR. BOGEN: I ask that the answer be stricken,
4 your Honor.

5 THE COURT: The answer may be stricken.

6 Q You say you recall the position taken by Local
7 28 in this arbitration, is that correct?

8 A That's right.

9 Q What was the position taken?

10 A Local 28's position taken, generally, every time
11 we asked for manpower, was that they were against it.
12 We didn't need the men. We couldn't prove it, no matter
13 what facts or figures that we presented, and it was only
14 until a lot of contractors got into a lot of trouble and
15 there was a lot of overtime being worked in the industry,
16 at that point then they would start to open up and bring
17 in permit men.

18 Q And now, with respect to the '72 negotiations
19 that we discussed, did you recall that the charts and
20 graphs and documents prepared by the employers were
21 submitted in negotiations to support the claim for 500
22 men?

23 A The specific number, no, I don't remember the
24 specific number.

25 Q Holding the specific number aside, do you recall

stuff that is sitting out here non-union we wouldn't have the problem with it. Maybe Local 28 would be doing it.

Q I assume your answer to my question is yes, that you have with respect to residential work?

A Yes, residential and others.

Q What other areas that you have put forward?

A Renovation work, 1964. In 1964 I submitted a detail paper during the hearing, in front of Theodore Kheel, and it was circulated again not too long ago, where I recommended, in order to fight 295 and the other non-union work that was going on in this city, that we got to fight them on their basis and get rid of the double time and do it when the customer wants the work done at night and get rid of this double time baloney and the rest of that so we wouldn't have the work, and if we did some of that, maybe there wouldn't be this unemployment today.

Q What other proposals have you put forth for a reduced contract?

A We made a recommendation to be put on a competitive basis on enclosure work out of town.

Q That's three. Is there any other area where you proposed a reduced contract?

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Zwerling-redirect

2 A I would say the majority, the bulk of their
3 skills they learn practically in the shop and the field.
4 It is supplemented by a continually apprenticeship train-
5 ing program.

6 Q I may have misstated the question. Where
7 do the journeymen acquire the skills?

8 A They acquire it on the job really.

9 Q While they are journeymen or prior to that
10 time?

11 A Well, it depends on what route they follow.
12 If they were in the apprentice route it is a period of
13 years of gradually acquiring skills. In some cases if
14 they have taken a test, they come from other sources,
15 that means they may have acquired it in non-union sources.

16 In our industry there is a tremendous broad
17 range of skills that are becoming more and more specialized.

18 Q With respect to Local 28 journeymen, to your
19 knowledge do Local 28 journeymen -- where do Local 28
20 journeymen acquire the journeymen skills in your shop?

21 A I would say they have acquired it in lots
22 of areas, some outside the range of Local 28, some actually
23 through Local 28.

24 MS. GROSS: I have no further questions.

25 MR. TUMINARO: I am not going to put any

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Zwerling-recross

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questions.

RE CROSS EXAMINATION

BY MR. ROTHBERG:

Q Mr. Zwerling, I just want to develop very briefly one area.

You testified that on the Trade Center job for ABT during the period 1969 to 1972 there was what you categorized as a severe manpower shortage, is that correct?

A Right.

Q Did you have in continuing requests to Local 28 for manpower during that period of time?

A Yes.

Q Did Local 28 refer men to you during this period of time in various numbers?

A Yes.

Q At any time did Local 28 desire your need during this period 1969 to 1972?

A I would say from -- I think we reached the point where we were satisfied in mid-1971, somewhere around there.

Q When you no longer required additional manpower.

A We did a lot of juggling. We brought in men

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from Triangle and --

Q Maybe you misunderstood my question.

Was there a time when you asked for 20 men and they sent you 20 men and you said no, I don't want 20 I only want 10 men? I understand there are various job changes and you may have required different numbers.

A Over a long period of time we did not get the number of men we asked on a timely basis. The number kept getting larger and we were under great pressure and finally when we saw we couldn't get it from the Union, we ultimately had to go to the parent companies and exert tremendous pressure on the parent companies to supplement our manpower. They stole them from other jobs that weren't that critical.

Q Were you required to pay your Local 28 members during this period 1969 to 1972 overtime because you didn't have enough men and were afraid of losing men on the job?

A Yes.

MR. BOGEN: I object to that and ask that it be stricken with respect to being required to pay. That is a characterization, your Honor.

MR. ROTHBERG: I said, were they required to pay overtime in order to keep the men on the job to avoid

2 them being attracted to other jobs.

3 A For overtime.

4 Q Was there a requirement that you from time
5 to time were required to pay them overtime?

6 MR. BOGEN: That is leading.

7 MR. ROTHBERG: I am on cross examination.

8 MR. BOGEN: I object to the characterization
9 of being required to keep the men which is improper. I
10 object to the question.

11 THE COURT: Overruled.

12 Q You may answer, Mr. Zwerling.

13 A Yes, we were required to pay overtime. As
14 a matter of fact it cost us an awful lot of money over
15 the course of the job.

16 Q Were you required to give the men any other
17 benefits over and above what is set forth in the contract,
18 such as pay them over and above the wages set forth in the
19 contract, for holidays not normally paid for?

20 A Yes. There were other forms of incentives
21 given to the men to keep them on the job.

22 Q Mr. Zwerling, in connection with the 1972
23 contract there was testimony that the Employers Association
24 put forth certain demands and the Union said no or they
25 were inflated or whatever the reasons were.

Was it not true that in the end the Union agreed to supply additional manpower to the Association?

A Yes.

Q Even with their own numbers?

A They consented to the numbers and they did agree.

Q In the 1969 negotiations the same thing happened, that the Association said we need manpower and the Union said no, is that correct?

A That is correct.

Q Was there a need for manpower from 1969 to 1972?

A Yes, obviously.

MR. ROTHBERG: No further questions.

RE CROSS EXAMINATION

BY MR. BOGEN:

Q Mr. Zwerling, this morning you testified with respect to Plaintiff's Exhibit 92 in evidence which were minutes prepared by Mr. Rosenthal of the meeting held August 22, 1968.

MR. ADAMS: Your Honor, this is not a subject for recross examination. There was nothing brought out on redirect.

THE COURT: No, Mr. Bogen, I will not permit

2 Q What type of business is J.J. Flannery
3 engaged in?

4 A We fabricate and install sheetmetal duct
5 work for heating, ventilating and air conditioning,
6 principally.

7 Q Does it engage in any other type of sheetmetal
8 work?

9 A Well, yes, it does. Most of our clients,
10 people we work for, do heating, ventilating and air con-
11 ditioning. We try to answer all their metal needs. There
12 are jobs where we have to do kitchen range exhaust work.
13 We do 10-gauge stacks. We do boiler flues. We do some
14 blowpipe work.

15 Q Do you employ sheetmetal workers?

16 A We do.

17 Q What is the source of the sheetmetal workers
18 that you employ?

19 A Local Union 28.

20 Q Do you have a collective bargaining agreement,
21 a contract with Local Union 28?

22 A Yes, we do.

23 Q Would you describe for us more specifically
24 what type of sheetmetal work your firm does or has done?

25 A Most of our work is commercial type work,

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meaning we don't engage in residents work. I would say 90 percent of our work is heating, ventilating and air conditioning work, both high and low pressure work.

Q Would you describe for us, please, what the term low pressure air conditioning means?

A It refers to the static pressure in the duct system. Normally this is below two inches of static pressure and the velocity in the duct is usually below 2,000 feet per minute.

Q And would you describe, please, give us a physical description of a low pressure air conditioning system?

A One thing I'd like to clear up. Air conditioning is just not cooling. It is treatment of the air, so you will not have heating, cooling, humidification, dehumidification in every job. These are components. You can have one of them, you can have all of them.

Air is brought in, put through a series of filters and coils, whether you want to heat the air or cool the air, and then pass the air, after you have treated it to the condition you want, and transmit it to the location that you want the air at.

Q Would you describe for us, please, a high pressure air conditioning system, the work which you have

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indicated you have done?

A The components of a high pressure job are the same as a low pressure job except that the fan must have certain characteristics in order to develop enough static pressure to push the air at a much higher velocity and generate much higher static pressure.

The reason they go into a high pressure job is to transmit this large volume of air through a much smaller duct, because a high pressure air conditioning job they use mostly in big office buildings where you don't want to have a fan room on every floor, so you have it centrally located, maybe one air conditioning room may take care of ten floors, and you want to transmit the high pressure air from the machine room to the location you want it at, occupying as little space as possible.

This is the reason for the high pressure characteristic. Once you get it to the location where you are going to actually use the air, then you step it down into low pressure.

Of course, high pressure air produces a few problems that we don't have in low pressure work, namely, a noise problem.

Q And now, you have indicated that you have done some blowpipe work, I believe?

1
2 A That's right.

3 Q Would you describe for us or state for us
4 the specific instances, if you can remember them?

5 A Well, the last time we did a blowpipe job --
6 the term "blowpipe" I don't know where it came from. It
7 is just a term that is used.

8 As far as I am concerned, we make ducts.
9 We make them to handle air under certain conditions. Some-
10 where along the line there has been a tag put onto blowpipe
11 work. I don't know where it originated from. I have
12 never bid a job as a blowpipe job.

13 We have had certain types of exhaust systems
14 that were required with our customers when we were doing
15 the air conditioning work, and if you want to call it
16 a blowpipe job, I refer to it as that because that is the
17 term that is used in the trade.

18 The last one we did was a job for Western
19 Electric, about two years ago we finished it.

20 Q What type of job was that?

21 A Well, we were doing the air conditioning in
22 a new plant out on Whitestone Parkway, and when the job
23 was just about finished, they started to move their
24 equipment in. This equipment was being used to fabricate
25 telephone booths, and it involved wood and metal and they

1 had grinders, shapers, and there were particles coming
2 off this production line where they made the telephone
3 booths, and we had to handle these particles as well as
4 the paint spray booths.
5

B2 6 Q And you installed -- you fabricated and in-
7 stalled a system for them?

8 A That we did.

9 Q What was the name given to that system that
10 you installed?

11 A Well, when we received the plans, the name
12 just referred to the shaper, a grinder, paint spray
13 booth -- it was an industrial exhaust system for whatever
14 piece of equipment they had at hand.

15 THE COURT: Can you fix a time on that,
16 Mr. Flannery?

17 THE WITNESS: 1972.

18 Q Have you had any other jobs in which you
19 have described it as blowpipe?

20 A Well, we did a job for Western Electric
21 probably six to eight years before that out in their
22 Springfield Boulevard plant. They had put on an extension
23 onto the building and the job we did in Springfield Boulevard
24 was much more extensive than this one.

25 Q What did it include?

1 A The same basic elements, except that they
2
3 had a big -- I believe they had two big houses on the
4 roof that they called bag houses and shakers, and it's
5 a very sophisticated type of filtering system.

6 In this particular case, all the products
7 that were removed from the industrial exhaust just couldn't
8 be discharged into the atmosphere so we had to remove the
9 product and it takes a room almost the size of this room
10 in order to collect these particles and have them bagged
11 and then disposed of, and our men erected the whole house
12 and the filters and the bags and the shakers and everything
13 else that went in it.

14 Q Would you describe for us, please, the work
15 that is performed from start to finish by your firm when
16 it receives a contract for a low pressure air conditioning
17 system?

18 A Well, as part of our contract, there is
19 always a set of plans, mechanical drawings. That is dove-
20 tailed into the specifications and worded in the contract.

21 Q Who prepares those plans, do you know?

22 A Mechanical engineer, who could be working
23 directly for the owner or for the architect.

24 Q So you receive a set of plans. What happens
25 after that?

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2 Q Prior to that time did you hold any positions in
3 the Association?

4 A Yes, I was vice president in 1969 and I was on
5 the Joint Apprentice Committee from 1966 until 1970. I was
6 chairman of that Joint Apprenticeship Committee for the
7 last three years I served.

8 I have also been a member of the Joint Adjust-
9 ment Board since 1966.

10 I served on the negotiating committee in 1966,
11 1969 and 1972 and I have also been on the Executive Board,
12 which is now called our Board of Directors; and that is
13 about it, I guess.

14 Q You have listed a large number of committees.
15 In addition to those you served on in one capacity or
16 another, are there other committees or boards in the
17 Association?

18 A Yes. We have trustees on the pension and welfare
19 funds, which is jointly administered with Local Union 28.

20 We have a Manpower Committee, Finance Committee,
21 we have our own insurance program for our members, both
22 business insurance and health insurance.

23 From time to time we form a committee for a
24 particular item. We have standing committees and we do
25 form committees as they come up.

1 12 arsr

Flannery - direct

2 Q There is information returned to you from the
3 members and then it is compiled on a summary form?

4 A That is correct.

5 Q Let us take the manpower first.

6 How long has the Association compiled data with
7 respect to this or when did it start to compile with
8 respect to this?

9 A To my knowledge, it was in 1969. We saw a
10 growing problem so we started to get facts.

11 Q Has this continued, has the Association continued
12 to compile that?

13 A Until 1972 and for present conditions we don't
14 have anybody asking needing men. It is obvious.

15 Q This data I assume was on the basis of your
16 testimony compiled by sending out forms, receiving informa-
17 tion and have summaries prepared?

18 A That is correct.

19 Q Mr. Flannery, I show you what has been marked
20 Exhibit 108 for identification. Would you review those
21 documents please?

22 Do you recognize these documents?

23 A Yes, I do.

24 Q What are these documents?

25 A Some of the sheets indicate the number of men

required by the member firm and a couple of sheets indicate the summary of the needs of the industry by months, weeks.

Q What period of time do these sheets cover?

A October 1968 until April 1969 on this sheet.

They go into 1970, July 1970. I guess they end in November 1970 -- then go to 1971, June 1st, 1971.

MR. BOGEN: The documents or papers have not been marked. I haven't objected because I assume it is going to be marked and offered so I could refer to it.

THE COURT: All right. Let us mark it.

A The last date is December 1972.

THE COURT: Do you have any objection, Mr. Bogen?

MR. BOGEN: May I have a short voir dire?

THE COURT: It is marked.

MR. CORSI: I marked it.

THE COURT: It is 108 for identification.

Q Do you recognize this sheet also?

A Yes, I do.

Q What are these sheets?

A Summary sheets of manpower needs of the Association as compiled from the weekly forms sent in by our members.

MR. CORSI: I would like to offer it in evidence.

MR. BOGEN: May I have a brief voir dire?

VOIR DIRE EXAMINATION

BY MR. BOGEN:

Q You personally did not do the compilation of any of the underlying documents or records, is that correct?

A No.

Q You personally didn't review the underlying documents or reports sent out and returned by members of the Association, did you?

A What do you mean by the word review?

Q As I understand you described the procedure undertaken by somebody, they send out some documents or forms and they are sent back.

Did you sit down and look at them as to accuracy or completeness?

A I know I have seen them but not on a regular -- every one of them, no.

Q You wouldn't look at these for example and examine them as to accuracy, would you?

A No.

Q Generally with respect to this kind of information, based upon past experience, are there reports under these circumstances sent out and returned, the forms, substantially accurate in terms of your experience?

A What do you mean by under the circumstances?

1 15 arsr

Flannery - direct

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2 MR. ROTHBERG: Your Honor, this is voir dire
3 as to the authenticity of this document, not what the
4 numbers are and not going into cross-examination.

5 THE COURT: Yes, I don't think this is voir
6 dire. You are cross-examining.

7 MR. BOGEN: I submit the document is offered,
8 and the witness testified he isn't involved with the
9 procedures, with the compilation of such.

10 THE COURT: You are asking for his opinion.

11 MR. BOGEN: I have no objection to the document.
12 Thank you.

13 ***
14 [Plaintiff's Exhibit 108 for identification
15 received in evidence.]

16 BY MR. CORSI:

17 Q Mr. Flannery, I direct your attention to Page 2
18 of this document and specifically direct your attention
19 to the textural material contained thereon. Would you
20 review that, please?

21 A Yes.

22 Q What is the meaning of that textural material?

23 A These three notes, to be very honest, for anyone
24 looking at this summary, they are trying to tell them
25 you have to take these numbers and see what the trend is
and it doesn't necessarily mean that the industry was

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short eleven men at two o'clock on Tuesday. It isn't as scientific a process.

When the union says they assigned men to a job, in many cases they did assign them and in many cases the men went to the job and the fellow says, "I don't like this type of job", and didn't report. I can't say I didn't send the men to the job and the fact remains the industry needs them.

There may be a time when there are one hundred men on permits, meaning one hundred permits have been issued. That does not necessarily mean that there were one hundred men working with permits because last Tuesday six might decide to go back to Connecticut and didn't turn in their permits, they kept them in their pockets.

So you have to take the documents and realize this is what is going on in the industry and when this document says so many men on permit, that is the most there could be on permit and in all reality there would be less working at that particular time.

Q Once the summaries are prepared, what, if anything, does the Association do with this data?

A We have a Manpower Committee and actually the summary and the weekly reports are ammunition, necessary material for our Manpower Committee to function.

1 The Manpower Committee takes these requests
2
3 and this manpower is a Joint Manpower Committee. We have
4 our three men and the union has the president of the union
5 and a couple of other men who he brings along with him --
6 Mr. O'Reilly was usually one of the men, and they review
7 our requests and if they thought they were reasonable
8 they might try to meet them.

9 It is a very grey area, how hard they tried, and
10 in cases where they tried very hard, there was also
11 instances where they were unsuccessful.

12 Q The data collected starting with October 1968,
13 let us take that period of time to begin with.

14 What happened with respect to the data concerning
15 requests in October of 1968?

16 A 1968 this is a time we went to Mr. Kheel because
17 we had a manpower problem. This was a little before
18 October. Can I go back a little bit on this?

19 Q Sure.

20 A We could see that we were entering a building
21 boom at this time. This was a period when the men would
22 take a job and the job would last two or three months and
23 we had a couple of those and he could always hope it is
24 going good and he could take one from this job and put
25 him on that job.

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1 We went into a tremendous boom of office
2 buildings in New York City. Anybody could walk around and
3 you could see there was construction going on, there was
4 a hole on every corner in New York City.

5 We took these jobs, these last two or three,
6 four years. Our contractor said, "I got two of these
7 jobs, I am preparing another one and I know the engineers
8 are working on a couple of more. No way can I meet my
9 obligations to finish these jobs on time with the manpower
10 I got, because I am going to keep these men on the job
11 a couple of years."

12 Knowing that we had this problem, just to make
13 the thing a little juicier, the Mayor came out with
14 Executive Order 71 and it gave us another problem. These
15 are the kinds of things we talked about at our meetings.

16 We decided because we are getting no response
17 from Local 28 from the Joint Adjustment Board meetings
18 and private conversations and all, that our only recourse
19 was to go to Mr. Kheel, the impartial arbitrator under
20 our collective bargaining agreement.

21 We explained to Mr. Kheel that Executive Order
22 71 requires the contractor to do the certain things and
23 it was very difficult to do the certain things unless we
24 had an agreement with the union on it, which we were also
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1 19 arsr

Flannery - direct

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2 having difficulty meeting our manpower needs.

3 After that meeting Mr. Kheel directed the union
4 to bring in one hundred mechanics, I believe that was in
5 September 1968. He directed the union to bring in
6 one hundred journeymen into the trade. This would be a
7 permanent number.

8 We had been using permit men but that is a very
9 transient situation and it is difficult for permit men
10 to operate if he doesn't know if he is going to get anything
11 he can grab hold of.

12 Listening to our problem and giving it some
13 credence, but not going out on a limb, Mr. Kheel said he
14 would direct them to bring in one hundred permanent
15 journeymen and issue 250 permit men immediately to give us
16 350 men at that particular time. He also retained
17 jurisdiction over the problem.

3.5am

18 The union -- this was in September -- gave a
19 test in November of 1968, opened it up, the books up and
20 gave a test for journeymen. As I recall about approximately
21 30 people passed this test. The order was to bring one
22 hundred people into the union.

23 But what they did with our full agreement was
24 skip out the seventh and eighth termers because the
25 contractors agreed with the union that if people couldn't

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pass the test the most qualified people that we could see closeby were our seventh and eighth term apprentices who were just on the verge of becoming mechanics and they skipped out the seventh and eighth termers and introduced an additional 70 apprentices in the first term and therefore our total work force was increased by the number 100 that we wanted.

Q That takes us through approximately -- I believe the test was given in November of 1968. The manpower requests and summary data with respect to that, did that continue to be kept over a long period?

A After that meeting with Mr. Kheel we could see the need and if we are going to convince anybody of our course, we just can't go around waving our hands and talk about generalities.

We started to compile data on a weekly basis because we knew the trends were getting worse and worse, this problem wasn't going to be resolved with the 100 men that Mr. Kheel said should be taken into the union.

Q Thereafter did the contractors association undertake any other activities with respect to manpower?

A We were constantly after the union. This 100 didn't solve our problem.

The union did bring in permit men, I don't know

whether they fulfilled the 250 or not. I really don't know but they were bringing men in and let us say that being in trouble is a matter of degree. You can be a little short, I am short one man and that is not life and death. When I don't have enough men to have two men on the job I have a problem. It is a matter of degree.

In 1969 we had an occasion to go back to Mr. Kheel again. This was just before we entered contract negotiations, it was the ninety-day period before.

Q What was the subject before Mr. Kheel the second time?

A The collective bargaining agreement -- no overtime permitted in the last ninety days with the exception of key men who prepared the work for the next day and work an extra hour at night to get things ready for the fellows to work in the field.

The union recalled permits from all hands, even the key men.

MR. BOGEN: I don't know how the witness is using the word "permits", is it with respect to overtime?

THE COURT: Read the answer back.

[Answer read.]

MR. BOGEN: I just wanted to know, is that overtime permits we are talking about?

THE WITNESS: Right.

THE COURT: Right.

Q Would you continue, please?

A We couldn't resolve it on a local Joint

Adjustment Board level so we appeared before Mr. Kheel,

we read the contract. He told the Union they were in

violation of their contract, and they were to issue the

permits for the men, the key men, to work overtime.

The Union never followed his instruction.

We took it through the courts, and we got justice after

we were on strike. The wheels grind very slowly. And

we had the problem in April, which was a fruitless effort,

but we went through all the motions just so we could

say we arrived at the top of the mountain, when we got the

decision that we were right back in April.

After the five week strike, part of that

labor negotiation, that new contract that we concluded

in '69, that was to run until '72, the Union agreed to

bring in another 100 mechanics.

You won't find this in our collective bargain-

ing agreement because we sign a memorandum of agreement

2 the night we make the contract. It usually takes eight,
3 ten months before the lawyers, the printers, and you
4 actually get around to sitting us down and putting a formal
5 signature on this.

6 By the time we got to that point, the Union
7 had brought in the 100 men and there was no point in writing
8 it in the contract, and politically and other reasons,
9 it was left out.

10 About 100 men were brought in because of the
11 collective bargaining agreement in '69. So if you keep
12 in mind in '68 Kheel introduced 100 new mechanics, 250
13 apprentices, that's 350.

14 The collective bargaining --

15 Q Apprentices?

16 A 250 permitmen, I'm sorry.

17 In 1969 the collective bargaining agreement
18 introduced another 100 men, so that means we have 100,
19 200, we are up to 450 at this particular point.

20 And when we started our first grievance with
21 Kheel there were only 200 apprentices in the trade at that
22 time.

23 The apprentices were increased as we went
24 along, so besides getting more mechanics in, more permitmen
25 in, we also received more apprentices in the trade.

Q And now, you mentioned the collective bargaining agreement in 1969. Did that include provision concerning the size of the apprenticeship class?

A Yes, it did.

Q What happened with respect to that?

A Should I go back a little bit and explain how that evolved? Maybe it would help.

Q Please.

A Prior to 1966, there was always a provision in the contract that said, "The contractor shall be entitled to one apprentice for every four mechanics," and the key word in that whole clause was "entitled."

It never meant that he was going to receive them or would receive them. But he was entitled.

Well, we lived with that, and many of our members were always happy that they were entitled. There were other members who wanted apprentices, and I became chairman of the Apprenticeship Committee in '66, and we entered into contract talks in '66, and I was on the negotiating committee and I was very concerned with the apprentice situation at that time.

I realized that sitting down and negotiating with the Union on this ratio of one to four, which really wasn't a ratio, that it was pie in the sky, it was an

2 entitlement, we were entitled to it, that I sat with
3 Mel Farrell and I said, "Mel, let's forget the number.
4 Let's be men. Let's come up with a number that you can
5 live with and I can live with and let's be men and live
6 with it."

7 And we ended up that time, we came up with a
8 new issue of seven to one, but I don't think it was written
9 into the contract as seven to one, it was written as 14
10 percent in the contract.

11 Unfortunately during contract talks I had to
12 go to a funeral one day, and when I came back there was
13 an additional clause tagged on to that saying, "14 percent
14 of the work force less sketchers."

15 For the next three years we found out that
16 Local 28 had more sketchers than you could shake a stick
17 at. Every time we said we need an apprentice, we find
18 out sketches were like 600, 700. So, remember, we must
19 subtract the sketches in there from the total work force
20 before we can find out the apprentices we are entitled
21 to, so that number didn't work so good.

22 Three years went by and we decided that was
23 a nice thought, seven to one, and 14 percent, but we never
24 did attain that.

25 Therefore, at the next contract talk in '69,

1 we evolved upon the idea, we will get a specific number.
2 What can you do with a specific number. We came up with
3 a new contract that said every six months we will get 50
4 apprentices in the program.
5

6 Now, this sounded pretty good to us because
7 that meant theoretically we would have 400 apprentice.
8 We have a four-year program. Every year we get 100, we
9 have 400 apprentices at any one time.

10 Keeping track of what went on, we found out
11 that the attrition rate, the dropout rate, became almost
12 50 percent, so we started with 50 boys, we ended up with
13 28, 26.

14 Come 1972 we decided that now the 50 per
15 every six months has to go. At this time the apprentice
16 class had grown to 600, because the Union had been coopera-
17 ting with us. They realized the manpower problem. When
18 there was full employment, they did give us apprentices,
19 but remember, in 1968 there were 200 apprentices. In 1972
20 when we bargained the new collective bargaining agreement,
21 there were 600 apprentices in the school at that time.

22 In our negotiation with the Union we said
23 we are willing to settle for this number at all times.
24 We don't want any more. We will settle for 600 apprentices
25 all the time, provided that you will fill in, when men

2 drop out, you fill them in.

3 So we always had the 600 apprentices.

4 The Union was wary, what are we to do in
5 bad times? And we agreed when times get bad, we are
6 willing to have a moratorium on apprentices.

7 We want the people to do our work when we
8 have work. We are not interested in getting the Union
9 and swelling it up to 10,000 people, 7,000 are going
10 to be unemployed.

11 But we do feel that we do have a contract
12 with the Union that says they will furnish us with people,
13 we hope they would do us this, good times and in bad,
14 and when we are busy, they should give us the people we
15 need to do our work.

16 Q Now, you have described what has occurred in
17 '68 with respect to manpower and at least through part
18 of '69.

19 What was the manpower situation after the
20 strike and the collective bargaining agreement in '69?

21 A Well, the Union took in an addition 100 men,
22 but if I can go back, 1958 Kheel gave us the 250 plus the
23 100 journeymen, and now the collective bargaining agreement
24 in '69 gave us another 100, so we swelled the ranks by
25 250 plus 200 is 450. But our prediction back in '68 that

1 we need 1,000 to 1,500, when we went to Kheel, we said
2 that over a three year period this is what we will need,
3 we still felt that way, 450 is still short of the 1,000
4 number.
5

6 In 1970, ABT -- now, this is when the World
7 Trade Center was just starting to take off. They had
8 a drastic need for more manpower down there, and they
9 filed a grievance with the Joint Adjustment Board that
10 they weren't getting enough men.

11 We heard the case. We had the same position
12 I just expounded, that the Union, it is up to the Union
13 to furnish us with people to do our work. We are bound to
14 them. They have to be bound to us, and respond to our
15 needs.

16 We deadlocked the Local Union 28 and the
17 case was appealed to the National Joint Adjustment Board.
18 They sent in two panelists who heard the case.

19 Q Who were the panelists that were sent in?

20 A A fellow named Dowler for SMWIA and Lou
21 Ward from SMACNA.

22 Now, they heard the case and Ward agreed that
23 the Union should give us more men to respond to our needs.
24 They deadlocked.

25 Now, Dowler didn't say that the Union -- Dowler's

2 theory was that the Union was responding, doing the best
3 they could, but he, in turn, admitted that we did need
4 more men, but his way of looking at it, the Union was
5 not in violation because they were trying. Our theory
6 was, I don't try to pay the men on Friday. I have got
7 to pay them.

8 Q Was a record kept of this proceeding?

9 A Yes, there was.

10 Q And how did the panelists arrive at the
11 decision? How were you notified of the decision?

12 A Well, all panel decisions, a copy of the
13 decision is sent to our Local office.

14 Q That would be --

15 A And I imagine they also send a copy to the
16 Union.

17 Q Is a copy of the record sent to the Association
18 office?

19 A That's right.

20 Q And are they kept in the Association files?

21 A They are.

22 Q I am showing you Plaintiff's Exhibit No. 109
23 for identification. Would you briefly review that?

24 MR. CORSI: Your Honor, just so that the
25 record is clear, there was a little confusion this morning

because of these other housekeeping matters, and I attempted to have Mr. Bogen review them, but we just did not have the time to review them beforehand.

THE COURT: Have we got several others there you are going to use with this witness?

MR. BOGEN: With respect to the 109 for identification, I had an opportunity in the last question and answer to review that, but I would prefer to review the other items possibly at the recess or something like that.

I want to follow the witness' questions and answers. The one he is looking at I have.

THE COURT: Right now I am going to give you a recess so you can review these.

MR. BOGEN: Fine. Thank you, your Honor.

(Recess)

BY MR. CORSI:

Q I believe at the break, Mr. Flannery, prior to the break I showed you a group of documents marked Plaintiff's Exhibit 109 for identification.

Can you identify that group of documents for me, please?

A Yes.

Q What is that group of documents?

1 A They are minutes of a panel hearing in
2
3 reference to the grievance procedure -- grievance of ABT
4 against Local Union 28 in reference to manpower.

5 Q What does the group of documents include?

6 A They are minutes of the panel hearing held
7 on July 31, 1970, at the Building Trades Employers
8 Association, at which Mr. Lou Ward of SMACNA and Mr.
9 Dowler of the SMWIA, they came in to hear our deadlock
10 case that we had previously, and it also contains the
11 fact that the panel is deadlocked and their individual
12 opinions written by each panelist.

13 MR. CORSI: At this time, I would like to
14 offer this in evidence.

15 MR. BOGEN: No objection, your Honor.

16 THE COURT: All right, it may be received.

17 (Plaintiff's Exhibit 109 received in
18 evidence)

19 Q And now, when the deadlock, as described in
20 these documents occurred, what then happened if anything?

21 A Well, under the procedures of Article 10,
22 part of our contract, we had the right to appeal this
23 to the National Joint Adjustment Board for a final decision.
24 If the panelists had agreed, we would be bound by their
25 decision, but the fact that they disagreed, we had a right

2 to appear it to a higher group.

3 The Association felt that since manpower was
4 a critical problem for all contractors in the City of
5 New York, it wasn't right to --

6 MR. BOGEN: May I interrupt the witness?
7 I didn't mind the witness characterizing things like that.
8 He asked him what he did and the reason why he did it are
9 really irrelevant to the issue before the Court.

10 The question is, what did they do? I didn't
11 realize we were going to introduce 109, because the record
12 will reflect the witness started to describe what is done,
13 what was said, et cetera. The document is in evidence now.

14 Q Is what was done, if anything, afterwards.
15 I ask that that portion addressed to anything else be
16 stricken, your Honor.

17 THE COURT: It may be struck.

18 What did they do, Mr. Flannery?

19 A We decided not to appeal this case but to
20 institute a new case.

21 Q And was a new case instituted, in fact?

22 A Following month we instituted a case against
23 Local 28 on behalf of the Association. Rather than have
24 ABT's case, we said everybody in the City had this problem,
25 we mind as well bring it to a head.

2 Q And how did you institute this proceeding?

3 A We filed a grievance with Local 28 to be
4 heard at the Local Joint Adjustment Board that was our
5 normal grievance procedure.

6 Q What happened at that Joint Adjustment Board
7 proceeding?

8 A That Joint Adjustment Board took place the
9 latter part of August and at that meeting Mel Farrell
10 agreed that he would bring in allied trades. Up until
11 now he was bringing in mostly sister locals, sheetmetal
12 mechanics from other parts of the country, qualified
13 journeymen. The rest of the country was in pretty good
14 shape, so there weren't that many men available to come
15 in. He claimed he had done all he could in that area,
16 so we persisted, and we were after him, that he must answer
17 our needs somehow, some way. There were previous times,
18 going back in the fifties, when they brought back, they
19 brought in people who worked in allied trades, meaning
20 they were mechanics, plumbers, lathers, carpenters, men
21 who were used to working with the tools, and in our great
22 shortage we could make use of these people.

23 We also suggested to Mr. Farrell that we
24 would like to do what they did in the fifties, if the
25 Union cannot satisfy our needs, let us hire people that

2 we are willing to employ, send them to the Union and give
3 these people a permit. This was done in the middle
4 fifties and he wouldn't hear of this, but he promised
5 to bring in men from allied trades, and he asked the
6 Association if we would wait until after Labor Day, which
7 was only two weeks away, that man men would be coming
8 back from vacation, and he was sure our problem would be
9 lessened.

10 Q And now, you indicated that this Joint
11 Adjustment Board meeting was held in August.

12 A That's correct.

13 Q Were minutes kept of that?

14 A Yes, they were.

15 Q And by whom were those minutes kept?

16 A Our minutes are kept by Mr. Rothberg, our
17 executive director.

18 Q I am showing you Exhibit 90 for identification.
19 Will you briefly review that?

20 MR. CORSI: I believe, your Honor, this is
21 the document where part of it was actually read into
22 evidence, the way we had discussed it.

23 THE COURT: Yes

24 Q Were you present at that meeting?

25 A Yes, I was.

2 Q And do these minutes reflect to the best of
3 your recollection, an accurate description of what took
4 place with respect to this problem?

5 A They do.

6 Q Answer this question.

7 A Yes.

8 MR. CORSI: At this time I would like to
9 offer this in evidence.

10 MR. BOGEN: I have no objection at this time,
11 your Honor.

12 May I just see it for a moment?

13 THE COURT: Yes, sure.

14 (Pause)

15 MR. BOGEN: I have no objection, your Honor.
16 I would just simply like to point out that there is a
17 second set of minutes physically attached with respect to
18 a different problem and a whole different issue, and since
19 it is attached by staple, I have no objection to their
20 all going in. Better still, may I request they be detached
21 and only that portion that is relevant here be offered?
22 I think the other portion is completely extraneous.

23 THE COURT: All right.

24 What is the date of those minutes.

25 MR. CORSI: August 19, 1970.

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THE COURT: All right.

(Plaintiff's Exhibit 90 received in
evidence)

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Q What occurred at that meeting with respect to
this problem, Mr. Flannery, or this question?

A We agreed to wait until after Labor Day and
review the situation.

As it turned out, they did bring in men from
allied trades. With winter setting in, traditionally
there is a slight slowdown in work. As I said before, it
is a matter of degree. We slow down but we are still
fantastically busy. All right?

Needs weren't really growing. They were
pretty static. Maybe they grew slightly. We felt that
the Union was making a legitimate effort to satisfy our
needs, more than that, we couldn't ask for at that particular
time.

The condition grew worse, though., as we
got into the spring, and we decided then that we had
to institute another Joint Adjustment Board meeting, and
again call in or try to solve it on a local level where
we were deadlocked, and this time the panelists that
came in were different than the previous time.

SMACNA sent in Mr. Ward again. However, SMWIA

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sent in Mr. Edward F. Carlough. When they heard our problem this time, Mr. Carlough directed that they take in -- not take in, but that 100 men from out-of- town should be brought in immediately.

I always wondered how it was possible, when the Union was doing their best to bring them in right along, that these 100 men became available, but they did.

Mr. Carlough directed that they be brought in. The Union brought them in, and Carlough and Ward retained jurisdiction on the problem.

Q Now, with respect --

MR. BOGEN: Excuse me, your Honor. I ask that that portion of the answer be stricken as speculation, why, et cetera. I didn't want to interrupt the witness.

THE COURT: That portion of the answer may be struck.

Q With respect to the panel hearing, when approximately was that?

A That panel hearing was about April. I believe our Joint Adjustment Board was in April. The panel hearing may have been a month later. Usually the panel hearing is about a month after the Joint Adjustment Board.

Q And was a record kept of that panel hearing?

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Flannery-direct

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A Yes.

Q And the decision?

A Yes.

Q Did the Association receive a copy of that?

A We did.

Q I refer you to Exhibit 111 for identification.

Will you review that, please?

And what is Exhibit 111 for identification?

A It is a panel hearing that was held on June 1st, 1971 at the Building Trades Employers Association.

MR. BOGEN: If your Honor please, to save some time I am prepared to have that stipulated into evidence.

THE COURT: All right. It may be received inevidence.

I assume it is not only the minutes but also the decision.

MR. CORSI: Yes, your Honor. In addition, as part of the record of that decision there were three schedules that were attached to that, one with respect --

THE COURT: As exhibits?

MR. CORSI: Yes.

(Plaintiff's Exhibit 111 received in evidence)

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1 Q With respect to the Joint Adjustment Board,
2 you indicated there was a Joint Adjustment Board meeting
3 prior to that panel hearing. Were minutes kept of that
4 also?
5

6 A Yes, there were.

7 Q Who were those minutes prepared by?

8 A Our minutes were prepared by Mr. Rothberg,
9 our executive director.

10 Q And were you present at the Joint Adjustment
11 Board meeting?

12 A Yes, I was.

13 Q Now, showing you Exhibit 110 for identifica-
14 tion, would you briefly review that?

15 MR. BOGEN: If your Honor please, I have
16 seen the proposed exhibit. I have no objection to it
17 being introduced at this time.

18 I just point out, I think 111 went in,
19 which is the panelists hearing. This is 110 so there be
20 no confusion.

21 THE COURT: Right.

22 THE WITNESS: Yes.

23 MR. CORSI: 110 is minutes of the Joint
24 Adjustment Board meeting held on Thursday, April 15, 1971.

25 (Plaintiff's Exhibit 110 received in

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in evidence)

Q I believe you indicated that as part of a decision of the panel, they retained jurisdiction?

A That is correct.

Q What thereafter happened concerning the manpower situation?

A One of the stipulations upon which the 100 men were brought in was that the Association would guarantee that these men would have at least 60 days employment. It would be unfair to bring them in and send the man home to Chicago after four or five days, and the Association guaranteed that that 100 men, when they were brought in, would get at least 60 days employment in New York City.

Approximately three weeks to a month later we appealed to the panelists and said we were prepared to guarantee another 100 men 60 days employment and another 100 men were sent in to the City.

Q Was that by order of the panelists?

A That is correct.

Q Was a decision rendered with respect to that?

A I believe that there is a written decision on that.

Q Did the Association receive a copy of that?

A Yes.

2 Q Showing you Exhibit 112 for identification,
3 will you briefly review that?

4 MR. BOGEN: If your Honor please, I am
5 prepared to have noobjection to the introduction of this
6 to save some time.

7 THE COURT: All right, it may be received
8 in evidence.

9 (Plaintiff's Exhibit 112 received in
10 evidence)

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11 Q Mr. Flannery, now this takes us to the time
12 of approximately June or thereabouts of 1971. Thereafter,
13 what if anything happened with respect to manpower require-
14 ments by Association members?

15 A Well, we still had the weekly manpower forms
16 being filled out. We were continually trying to allocate
17 the men that the Union did bring in to the various con-
18 tractors so that everyone got a fair representation out
19 of this.

20 An incident occurred in -- while we were
21 in contract talks.

22 We entered into contract negotiations 90
23 days before the contract runs out. Approximately 30
24 days before the contract ran out the Union pulled all the
25 permits on all of the men in the City.

2 I'm not talking overtime permits. I am talk-
3 ing about work permits for the out-of-town men. And we
4 again appealed to the panelists who had retained juris-
5 diction on this problem, to solve our problem.

6 Q Approximately when was this?

7 A In June of '72, early part of June.

8 Q What happened when you appealed to the
9 panelists?

10 A The panelists came in and demanded that the
11 permits be reinstated, and they were.

12 Q Was there a written decision with respect
13 to that?

14 A Yes.

15 Q I show you Exhibit 113 for identification.

16 Will you review that?

17 MR. BOGEN: Same position taken, your Honor,
18 to expedite it, no objection.

19 THE COURT: It may be received in evidence.

20 (Plaintiff's Exhibit 113 received in

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21 evidence)

22 MR. CORSI: That is a cover letter from

23 Mr. Rothberg, dated August 9, 1972, to members of the

24 Association, and there is an attachment entitled Panel

25 Hearing, date June 12, 1972.

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Flannery-direct

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Q We have been discussing manpower requirements over the period and questions concerning manpower requirements over the period '68 to 1972.

During the discussion you have indicated, you have mentioned overtime.

A That's correct.

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1 1 arsr Flannery - direct 1345
2 Q First would you describe the meaning of overtime?
3 A Our collective bargaining agreement calls for us
4 to work a regular day which is a seven-hour day between
5 the hours of eight and 3:30. Any time performed outside
6 of the regular hours, including the lunchtime period,
7 it would be performed and considered overtime, which would
8 be paid at the rate of double time.

9 Q Is it a fair statement to characterize your
10 testimony up to this point that the manpower needs of
11 Association members were not being met during this time
12 from 1967 to 1972?

13 A That is right.

14 MR. BOGEN: Objection to the characterization.
15 It summarizes the witness' testimony and the record speaks
16 for itself.

17 THE COURT: Yes, sustained.

18 Q During this period --

19 THE COURT: The answer to that question may be
20 struck, Mr. Bogen.

21 Q During this period, 1968 through 1972, was overtime
22 being paid to the sheetmetal workers employed by the
23 Association?

24 MR. BOGEN: Your Honor, we already have in evidence
25 a schedule with respect to periods of time. I purposely

2 stipulated to avoid the area generally. If there are
3 specific questions, fine. But I think the document in
4 evidence will speak for itself.

5 THE COURT: I think it speaks for itself. I
6 will let him answer the question and I assume he is going
7 into specifics.

8 THE WITNESS: May I have the question again?

9 [Question read.]

10 A Yes.

11 Q Do you know how much overtime was being paid
12 during this time?

13 MR. BOGEN: Objection, your Honor.

14 THE COURT: Same objection and sustained this
15 time.

16 Q I believe you also indicated in your testimony
17 that the men were working on permits during this period of
18 time, 1968 through 1972.

19 A That is correct.

20 Q I believe that you indicated that at Association
21 meetings of the Contractors Association, various problems,
22 both industrywide and specific problems of an individual
23 employer would be discussed.

24 A That is correct.

25 Q Was the subject of permits ever discussed at

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Contractors Association meetings?

A Yes.

Q Can you describe the discussions that took place with respect to this?

MR. BOGEN: Objection, your Honor. Certainly we are not bound by that and it is irrelevant to anything before you.

MR. CORSI: I would like to have Mr. Flannery describe the problems, if any, the contractors had in employing permit men and what kinds of problems they may have had.

THE COURT: It is already described.

MR. CORSI: I don't think that it is fully described.

THE COURT: I think so. I am not going to let you ask the question. I am sustaining the objection.

Q Mr. Flannery, I believe that you also have testified that Executive Order 71 has been either discussed or has been put before the Association, is that correct?

A That is correct.

Q Would you describe for us the context in which that was discussed?

MR. BOGEN: Objection, your Honor.

THE COURT: I will sustain the objection.

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2 I will ask, Mr. Flannery, what was your problem
3 with that Executive Order.

4 THE WITNESS: The problem --

5 MR. BOGEN: I will object and I do so with the
6 greatest deference.

7 THE COURT: That is all right, your objection
8 is noted and overruled.

9 THE WITNESS: Our problem with Executive Order
10 71 was it was impossible to comply unless we had the
11 cooperation of the union.

12 THE COURT: In what regard?

13 THE WITNESS: As I remember Executive Order 71
14 related to putting minorities on jobs. It would be
15 impossible for us to put minorities on the jobs without
16 the cooperation of the union without having a work stoppage
17 and at our meetings we discussed how can we get together.

18 MR. BOGEN: I want to object, this is going in
19 the back door where your Honor said he can't go in the
20 front door. I object to anything further.

21 THE COURT: You show me what the problem was.

22 MR. BOGEN: As seen by Mr. Flannery.

23 THE COURT: Of course.

24 Q Did your association take a position with respect
25 to Executive Order 71?

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2 THE COURT: The only way it could be relevant
3 would be if he asked Mr. Flannery was the position communi-
4 cated to Local 28.

5 MR. BOGEN: I withhold comment on the Court's
6 assistance to counsel.

7 Q Mr. Flannery, was your Association's position
8 with respect to Executive Order 71 communicated to Local
9 28?

10 A Yes, it was.

11 Q What if any response was received by the
12 Association from Local 28?

13 A We didn't receive any real, direct plan or
14 response, how we could respond to it. We had to take it
15 job by job, whatever happened, happened and if anything
16 happened on the job it was worked out.

17 There was never a real plan. There was never
18 a real affirmative action taken or a setup whereby we
19 could satisfy all hands.

20 MR. BOGEN: I will ask that the reference to
21 affirmative action plan be stricken, your Honor.

22 MR. CORSI: On what ground?

23 MR. BOGEN: If his Honor wants me to respond to
24 that, I will.

25 THE COURT: I do want you to.

1 7 arsr

Flannery - direct

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2 MR. BOGEN: On the basis it is a conclusion,
3 a characterization of what is involved. He asked the
4 union position. It was on a case by case basis and it
5 was resolved. I think that that is the testimony of
6 what was done. Then the characterization they didn't do
7 it on an overall basis. I don't see any basis for the
8 question with respect to the plans. He said it was
9 done on a job by job basis.

10 THE COURT: Lay a foundation for me.

11 MR. CORSI: Yes.

12 Q Would you describe how this was worked out on
13 a case by case basis?

14 A The contractor would take a job, he would have
15 certain requirements in his contract pertaining to
16 minorities. When his job started up, depending on the
17 particular job, some jobs there wasn't great pressure put
18 on the contractor to live up to his obligation. Those
19 particular jobs went by very simply.

20 MR. BOGEN: I couldn't hear the witness' answer.

21 THE COURT: You will have to speak up.

22 A In some cases there wasn't great pressure put on
23 the contractor to live up to the obligation -- maybe the
24 words were there -- but when there was no pressure put on,
25 just slid by.

2 Other cases where jobs were actually stopped.

3 There was a period of time when the City of New York
4 stopped building on the Board of Education for over a year
5 period.

5.2am 6 Q Can you give us instances where, if there are
7 any, where contractors had difficulty with respect to
8 meeting whatever requirements were contained in Executive
9 Order 71?

10 A 1968, that time we appeared before Mr. Kheel
11 with the dual problem of Executive Order 71 and the
12 manpower problem, at that time we had three or four
13 contractors declared ineligible for City work, Howard
14 Martin, Sona, and General Sheetmetal. They were having
15 this problem conforming to Executive Order 71.

16 Q Do you know how their problem was ultimately
17 resolved?

18 A I don't. We had so many of them, they all got
19 mixed up. I couldn't give you a good answer on how any one
20 was resolved.

21 Q Were there other occasions when contractors were
22 unable to meet the requirement that you know of?

23 A There was one case that I am fairly familiar with
24 the case, the State Office Building up on 125th Street,
25 Federal Sheetmetal had that job.

Q What happened with respect to that job?

A On that job there was a requirement -- I am not sure whether there was a requirement for minorities or trainees but a requirement for minorities on the job, whether full journeymen or apprentices or trainees I am not familiar with.

The State sent two minorities to the job, those minorities stayed down on the ground level, never did perform any work on the job and after a period of time were taken off.

Q Why was it that they did not perform any work on the job?

MR. BOGEN: Objection, your Honor. The witness already stated he didn't know what took place at the job.

THE COURT: Sustained.

MR. BOGEN: The question is improper.

Q Do you know why they were taken off the job?

A I don't know why they were taken off, no.

Q Are there any other unions in New York City that do sheetmetal work that you are aware of?

A Local 295 I believe, they are connected with the operating engineers. They seem to do a combination of electrical work, sheetmetal work and plumbing work.

1 10 arsr

Flannery - direct

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2 There is also another local union but I don't
3 know the number but affiliated with the teamsters somewhere.

4 Then there is Local 400 which is the Blowpipe
5 Division of SMWIA in New York City. There are a couple
6 of others, some small unions operating in the garment
7 center. I don't know the number.

8 Q Are you familiar with the type of work that is
9 performed by Local 400?

10 A Only from the designation of blowpipe work,
11 what that connotes.

12 Q Have you ever had occasion to hire a member of
13 Local 400?

14 A No, I have not.

15 Q Is there any particular reason for that?

16 MR. BOGEN: Objection, your Honor.

17 THE COURT: What is the reason for the objection?

18 MR. BOGEN: The witness has given an answer,
19 I don't think it is proper to ask why he hasn't asked it
20 or has asked it.

21 THE COURT: Overruled, you may answer.

22 A I have never had anyone come in and ask for a
23 job from 400.

24 Q Will you be willing to hire someone from 400
25 if he asked you for a job?

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2 MR. BOGEN: Objection.

3 THE COURT: Overruled.

4 A Just on the basis that the man said he worked
5 for 400?

6 Q Yes.

7 A I hire a man by what he knows and what he can
8 do. If I needed a cutter and he showed me he could cut
9 I would hire him. If he presented a number to me, it
10 doesn't mean anything. The man told me his experience
11 in blowpipe work and I needed someone to do round work
12 for me, a yes or no, I would hire him. Yes, I would because
13 I think he is qualified and I can find that out in three
14 or four hours in the shop.

15 And no, I wouldn't because I wouldn't want to lose
16 all the rest of my men I have working in the shop.

17 Q Why would you lose the other men working in the
18 shop?

19 A I have been told many times, "When you hire
20 someone not in Local 28 be sure you hire enough to do all
21 your work."

22 MR. BOGEN: I object and move to strike that.
23 Mr. Flannery may have that said to him, but by who and where
24 and why?

25 MR. CORSI: May I try to establish that?

12 arsr

Flannery - direct

THE COURT: Let us go through the 5W's.

Q By whom were you told this?

A I have heard Mel Farrell say it many times over the years.

Q Have you heard anyone else say that?

A Various business agents.

Q Of --

A Local 28. It is a very common expression.

Q A common expression?

A Which means by hiring people from the street, the union answer is, "You better hire enough to do all your work." I didn't put that in my diary.

Q Have you ever hired anyone, that is to do sheet-metal work, that is not affiliated with Local Union 28?

A The only time I would hire anyone is if he had a permit from Local 28. Either a union card or had a work permit from 28.

Q Mr. Flannery, way back at the beginning of your testimony you indicated that you took contracts over a broad range of dollars.

A That is correct.

Q Would you give us that range again, please?

MR. BOGEN: Objection, it is in the record already.

1 A We don't make any guarantees to our men.

2 Q Do you know, Mr. Flannery, how the members of
3 the Contractors Association recruit their work forces?

4 A Most shops I would say try to get referrals
5 from their own men. If I were looking for four or five
6 or six men, I would let the people who were working for
7 me know I was in the process of going to hire next week
8 and they would have friends, they know the type of shop
9 we are, they know people who would be desirous of making
10 a change for whatever reason, it may be the job is closer
11 to the fellow's home or my shop or is just desirous of
12 a change in scenery, that is all.

13 Q If that wasn't successful, what, if anything,
14 would you do?

15 A Eventually call the union or the business agent,
16 work through personal contact.

17 Q Anything else you would do to recruit workers?

18 A No.

19 Q Are you familiar with Article 16 of the present
20 collective bargaining agreement regarding the contributions
21 by contractors to the Board of Urban Affairs?
22

23 A Yes.

24 Q What is the Board of Urban Affairs?

25 A It is a board that was created by the BTEA, the

to my heirs.

MR. TRIMBOLI: No further questions.

CROSS-EXAMINATION

BY MR. TUMINARO:

Q Mr. Flannery, you said once or twice that you are not a large contractor but you stated earlier that you may do a job of a million dollars or two million, is that correct?

A That is correct.

Q Do you know if other contractors in your association or in signed agreement with Local 28 who would also do a job of that size, one and a half million or two million?

A I do.

Q Do you know of any contractors not in signed agreement with Local 28 who would do a job of that size?

MR. BOGEN: Your Honor, objection. The witness already testified in two different fashions with Mr. Corsi, that he doesn't know what the non-work is or who they are and doesn't have any idea. The witness at this time is simply a restatement of the question.

THE COURT: I will let him answer the question.

A I don't know of any shops who would do a job that size.

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Flannery - cross

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weeks.

Q What are the considerations?

A The time element and can you finance a job. If I took a job tomorrow that runs twenty years and had 400 men on the job, no way. I can't pay the payroll of 400 men and stay solvent.

I must determine the work load, what would be required for this job and I must pay for iron and have a certain credit line and if I can keep my structure, I keep below 100 men, that would be my number. I normally operate 65 or 70. With the men available as it is, I take work that keeps me in that 100 man group, I am solvent. Otherwise I am in trouble.

Q Do you mean manpower requirements affect the question of whether a contract would or would not be bid?

A If there is no men available, I have turned work down during this period when we were short men. I actually turned down contracts, companies I worked for years and they say I have this job, I want you to do it, \$30,000 job, and I say fine. And they say you must do it in a month. I say I can't do it, because I don't have the manpower, so I will turn down contracts of valued customers and this has left a bad taste in their mouths.

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Flannery - cross

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The same customers I am going to today and I need work and they say remember when you didn't do the job for me when I wanted you to?

Q You mentioned that there is the consideration of time and you mentioned other considerations such as a credit line.

A Available manpower. I must have men to work the job.

1 jkfw 6

Flannery-cross

138

2 blowpipe of the industrial exhaust system is in a different
3 field all together from the field that you are in in
4 heating, ventilating and air conditioning?

5 A No.

6 Q You say it is not a fair statement? You
7 say it is not?

8 A Your question was, was it a fair statement.
9 The question was, was it in my field? I say the field
10 I am in is making duct work that handles air. I don't
11 care what application --

12 Q Are you saying now that the blowpipe is not
13 in a different field? Is that what you are saying now?

14 A Can you be more specific? There are many
15 different brands of automobiles. They are all automobiles.

16 Q Is it a fair statement to say that the
17 blowpipe employers in signed agreement with Local 400
18 are in a different field all together from the heating,
19 ventilating and air conditioning employers?

20 MR. ROTHBERG: Objection. He has testified
21 he has no knowledge what went on in the shop of the Local
22 400 employer.

23 THE COURT: I will sustain it.

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1 arsr Flannery - cross

Q Now, would you say that with blowpipe generally this is a different field entirely from your heating, ventilating and air conditioning?

MS. GROSS: The witness already testified that he does blowpipe and exhaust work and does other kinds of work, too. The question is not directed to the witness' direct examination.

THE COURT: I think you had an answer already to the question. That was enough, there was no difference.

Q Mr. Flannery, I would like to read to you from your deposition that was taken October 25, 1972. I refer to Page 53, Line 15.

Do you recall having these questions asked of you at that deposition and giving these answers:

"Q Now, there is a difference between the industrial sheetmetal product and some other heating, ventilating and air conditioning sheetmetal products, is that correct?

"A Right.

"Q Could you explain what that difference is?

"A The difference is in the nature of the system. Industrial work that we do is mostly in-plant. It involves cyclones, the dust separators. Mostly round pipe that they handle and the heating, ventilating and

2 arsr

Flannery - cross

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air conditioning, most of it is rectangular duct work and is strictly for human comfort rather than handling a process. So they used galvanized sheet metal just the way we do, only they use it for a different purpose. They are in a different field altogether than we are. They are in a process type operation where we are in a comfort, cooling and heating.

"Q By process type operation, do you mean that substances other than air run through the pipes that they make, is that it?

"A No, no. They would handle air but the air would handle sawdust shavings from -- or the sparks, pieces of metal from a grinder and you have to handle this at a much higher velocity otherwise these particles separate out but it's an entirely different engineering system than ours.

"If I take a piece of metal and bend it into a round shape and they do it, the metal doesn't know the difference who did it."

I ask you, Mr. Flannery, when you made this statement they are in a different field altogether than we are, was that a correct statement at the time?

A In the context in which I meant it, yes.

Q Is it also correct that "It is an entirely

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members of the Association and non-members of the Association in signed agreement, can they be characterized as big or small? Any way you could characterize or describe them?

A You say members and non-members?

Q Yes, big shops or small shops.

A Yes.

MS. GROSS: Can Mr. Bogen define the terms?

THE COURT: What do you mean by big, number of employees or square footage occupied?

Q When you say big shop or large shop and small shop, what do you mean by that, sir?

A I would consider myself a medium sized shop. Like everything in life you compare it to yourself. Either bigger than we are or smaller than we are.

Q In terms of number of employees?

A Yes.

Q Approximately how many of the sheetmetal shops in the Association would you say are larger than you are in terms of number of employees?

A Twelve, fifteen, in that range.

Q How many smaller than you are?

A Subtract 15 from 44.

Q How many is that?

A 30.

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2 A Yes. My tongue is getting tired.

3 Q So long as mine isn't we will get along.

4 A Yours will never get tired, Sol.

5 MR. BOGEN: May I have a recess to recover,
6 your Honor?

7 THE COURT: I was hoping his legs would get
8 tired.

9 Q Did Mr. Farrell also state at this time that
10 the trainees, with respect to what we were able to observe
11 in the industry together, were entirely unqualified to
12 be assigned to perform work at the sheetmetal jobs?

13 A Well, there was a discussion of taking these
14 people who would have no skills or some skills and integrating
15 them in the apprentice program which is what the contractors
16 favored.

17 Q You favored that? Mr. Farrell objected on the
18 basis that these people as far as he was concerned, the
19 union, not having the aptitude or the qualifications?

20 A We are willing to take them in as a zero
21 apprentice. Why he objected to integrating them in the
22 apprentice program, his reasoning for it, I don't know.

23 Q I wouldn't have asked you that, but did he state
24 that he believed the people were unqualified, without
25 aptitude under the entire program? Did he tell you that

in words or substance?

MR. TUMINARO: Objection. He said the reason is he doesn't know. He is now asking him the same question.

THE COURT: No, he is not. He is asking whether this is what Farrell stated to him.

A I don't recall him stating this to me.

Q Under Executive Order 71, did Mr. Farrell in words or substance tell you that Local 28 had unemployed journeymen available to be employed in those jobs?

A I would imagine so.

Q Did he tell you that on occasion after occasion?

MR. ADAMS: Could we get a date on this?

THE COURT: What date?

Q Between 1969 and his death in 1972 -- during the occasions, the period 1969 through February 1972.

A 1969 until midway in 1972 we had full employment. I don't know how there would be unemployed.

Q Did he tell you that he had unemployed minority journeymen who would be available for these jobs?

A No, sir.

Q During the discussion with respect to Executive Order 71, did Mr. Farrell in words or substance, or other representatives on behalf of the Union state that in their opinion Executive Order 71 and the rules and regulations

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2 A No.

3 Q Do you know if these contractors completed the
4 jobs?

5 A I would presume they did.

6 Q After the original complaint or the discussion
7 with respect to these contractors, with respect to these
8 contractors and those jobs, whatever they may be, was
9 the matter laid to rest for these three?

10 A I presume it was properly handled by our
11 Executive Director and our counsel for the Association,
12 and he satisfied these members, because I didn't hear
13 any more complaints from them.

14 Q You also testified with respect to the Harlem
15 Office Building, certain minorities. Were you personally
16 familiar with the work at the Harlem Office Building?

17 A In what regard? Personally? The work, I know
18 that minorities were required. They were sent by the
19 State. They didn't work and they were withdrawn.

20 Q Do you know who the minorities were?

21 A The persons?

22 Q Yes.

23 A No.

24 Q Do you know whether they were black or Spanish
25 speaking?

1
2 A I understand there were two blacks.

3 Q Do you know whether they were qualified, whether
4 they had experience in sheetmetal?

5 A I have no knowledge.

6 MR. CORSI: Your Honor, I object to this line
7 of questioning. I attempted to get into that earlier this
8 morning and I was prevented from doing so on the basis
9 that he was not directly involved, and I believe it is
10 really a repetition of what I attempted.

11 THE COURT: It is a repetition.

12 MR. BOGEN: I beg to disagree at this point,
13 in all due deference. It was developed on the record,
14 a limited amount, as to what occurred on this job. I am
15 indicating and only exploring that aspect that was developed
16 on the record. I am not going beyond those areas that Mr.
17 Corsi attempted to go into.

18 THE COURT: Let's not have any more argument
19 on it.

20 MR. BOGEN: May I have the last question and
21 answer read back, please, or if there is a question
22 outstanding, read that back.

23 THE COURT: There isn't a question outstanding.
24 He said he had no knowledge. He understood there were
25 two blacks on the job.

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Q I believe I asked you or stated, did you know their qualifications or experience?

A No.

Q Do you know the circumstances under which they left the job?

A No.

Q Do you know if they were paid for the time that they were physically on the job?

A I understand, the knowledge that I got from the trade is that they were paid for the period --

MS. GROSS: Object to anything that is not based on his personal knowledge.

THE COURT: I will let him answer.

A My understanding is they were paid and the contractor was back-charged. In other words, the contractor himself did not pay the blacks, but they were paid by the State or some other party in the amount of money paid to these two trainees was taken out of the contract sum due Federal Sheetmetal.

Q Was Federal reimbursed under its contract, if you know, with the State for the payment of wages to these trainees under these circumstances?

A I understand it was part of the contract originally. I have seen documents on this type of a job

Q You indicated that Mr. Farrell's response generally was that the apprentice program was non-discriminatory and that was the best way or that was the way to train sheetmetal workers as far as he was concerned, is that correct?

A That's correct.

Q Would you agree with his position?

A I agree with his position.

MR. BOGEN: I have no further questions of the witness, your Honor.

MR. CORSI: I have two very brief questions.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. CORSI:

Q Mr. Flannery, in cross-examination by Mr. Bogen you discussed the blowpipe work that you have done and I believe the statement you made was that those two jobs that you and I had discussed originally on direct were the two jobs that you have done -- I believe you used the term -- of any size.

A That's correct.

Q Have you done other blowpipe work in addition to that?

A Many times we have done an air conditioning job

and there's been some small hood work or maybe there's been one grinder, a bench grinder, and it's been one day out of a year on the job, you know, a small piece.

Q And how often would that occur?

A It's a hard thing to characterize. I'd say one out of every ten jobs I do, for the sake of a number.

Q And would you say that this series or the number of times that this would come up, this has happened over the course of the ten or fifteen years that the firm has been in business?

A That's correct.

Q You had also indicated to Mr. Bogen that you consider yourself a medium size shop.

A Right.

Q And then there are smaller shops and there are larger shops. Can you name for us some of the larger shops, shops that are larger than your shop?

THE COURT: I don't understand why this is necessary, frankly. He has indicated that they exist, he said about fifteen of them, and 29 on the other end. Nobody has questioned his veracity on this subject.

MR. CORSI: Yes, your Honor --

THE COURT: Let it go, please. I think this is just burdening the record again.

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2 THE COURT: All right.

3 MR. CORSI: Mr. Roosevelt Mitchell.

4 MR. BOGEN: At this time, your Honor, I am
5 going to respectfully request that all witnesses the
6 government intends to call, I believe there are one or
7 two in the back of the courtroom, be sequestered. I
8 think the kind of areas we are going to anticipate, in
9 all fairness, and candor, they shouldn't be in the court-
10 room while one witness testifies, not that there would be
11 anything wrong.

12 MS. GROSS: We have not requested that Mr.
13 Bogen's people to be called as adverse witnesses here be
14 eliminated from the courtroom. I don't see that one
15 witness might impinge on another in this case. It would
16 not be appropriate here. The witnesses are called as
17 individuals.

18 MR. BOGEN: I think it is highly appropriate,
19 in all cases, we did sequester them and it is not unusual.

20 THE COURT: It is not unusual.

21 MS. GROSS: I recognize it is not unusual.
22 It hasn't happened in this proceeding and we can't see that
23 it is necessary.

24 MR. BOGEN: It hasn't happened because of the
25 nature of the witnesses called, all of whom were plaintiff's

witnesses and they were from a different divergence and there were no witnesses present as far as I was concerned from our side except Mr. Stack who is a principal on behalf of Local 28.

THE COURT: I will rule that all witnesses be sequestered, to leave the courtroom until they are called.

MR. BOGEN: Thank you, your Honor.

ROOSEVELT MITCHELL, called
as a witness on behalf of plaintiffs, being first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORSI:

Q Where do you live?

A 129 Atkins, Brooklyn.

Q How old are you, sir?

A 32.

Q How long have you lived in New York City or
the area?

A Approximately 12 years I would say.

Q What education have you had?

A Up to the 12th grade.

Q What is your present occupation?

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Mitchell-direct

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A Cutter, a layout man.

Q In what field is that?

A Sheetmetal.

Q Where do you presently work?

A Federal Sheetmetal.

Q Do you belong to a union?

A I am a member of Local 28.

Q When did you become a member of Local 28?

A I think it was in 1969.

Q Prior to that time, were you a member of a
union?

A I was in Local 400.

Q How long had you been in Local 400?

A I think it was 1965.

Q Prior to that time, did you belong to a union?

A I was in the Longshoreman's Boom, Rigging,
1715.

Q How long had you been in that union?

A I think it was about two or three years, I
think it was.

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EEO v.
Local 25

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Mitchell - direct

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Q And could you give us a date on that; when did you first join that union, approximately?

A I would say around 1963, I think, something like that.

Q What type of work were you doing when you were employed -- I'm sorry -- when you were a member of that union, that first union?

A The work was working in marine work, on the shops, putting in duct work and working on the life boats that the Government brings in off the Merchant Marine ships and cargo ships. We were replacing the plates and bolts, you know.

Q What company were you working for at that time?

A A company called Colony Metal.

Q How long did you work at Colony?

A Approximately four years, I would say, up until -- I think it was '62 up until '65.

Q And where did you work starting in 1965?

A I started at a company called Brooklyn Blower, after the name was changed to Rotodyne.

Q At the time that you worked for Brooklyn Blower, did you join a union?

A Local 400, I joined Local 400.

Q Were you in a particular division of Local 400?

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2 jksr

Mitchell - direct

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A I was in the Sheetmetal Department.

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Q When you say the Sheetmetal Department, what do you mean by that?

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A The blowpipe industry.

6

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Q What was your status or your position in the Blowpipe Section at that time in 1965?

8

A I served as apprentice.

9

Q How long were you an apprentice?

10

A I served four years.

11

12

Q Were you part of the Local 400 Apprenticeship Program?

13

A Yes, I was.

14

Q Did you graduate from that program?

15

A Yes, sir, I did.

16

Q Did you receive any schooling in that program?

17

A No more than the regular apprenticeship school.

18

Q Where was the school held?

19

A The first school started at Brooklyn Tech,

20

Downtown Brooklyn, and after it changed over and went to Long Island City, to Long Island School.

21

22

Q During this Apprenticeship Program -- and you have indicated that it was four years in length -- what kind of instruction did you receive?

23

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A I have been taught layout, how to assemble the

25

work and some fabrication involved in installing.

Q Were you taught anything else?

A We were taught a little sketching and different things like that.

Q Would that also include drafting?

A Well, to a small degree.

Q When you worked at Rotodyne, what kind of sheet-metal work did you do?

A Well, I was a little ahead of all the other guys more or less, and I was able to really get way down into deep layouts, into deep precision work and everything like that, you know.

Q Can you give us an example of some of the things that you were doing?

A Well, we used to make such things as dust collectors, dust arrestors and spray booths, regular duct.

Q When you say regular duct, what do you mean by that?

A That is regular straight ducts, rectangular.

Q That is rectangular?

A Yes, and round fittings.

Q What is a round fitting?

A Well, a round could be anything round, but all various different degrees and different things, you know,

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4 jksr

Mitchell - direct

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2 elbows and Y-branches and tapers, so many different things,
3 U-collars, different things that you really go into.

4 Q Would you describe for us the specific work that
5 you performed on one of these projects?

6 A Well, one of the various projects that we used
7 to go into is dust collectors. It is something they
8 use on factories to collect the dust out of the factory.
9 Say, for instance, there is wood, some place they are
10 making furniture and different things like that; any place
11 they are grinding, they are making a lot of dust. We
12 could set up a system that would collect all the dust
13 from pipes, you know, where the various machines were at,
14 collect the dust, take it to the roof, into the dust
15 collectors, and in the dust collector you have what you
16 call a big dust box at the bottom where the heavy stuff
17 falls in at, you know.

18 Q On this dust collector, what kind of work did
19 you perform to make this dust collector?

20 A Well, you have to go through your layouts really.
21 It's according to what size, you know, the fittings are.

22 Q Let's take the dust collector. Describe for
23 me the parts of the dust collector.

24 A Dust collector you have what you call the body.
25 That is the big part of it up to the top. The bottom

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1 5 jksr

Mitchell - direct

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2 part, what you call, is the cone; this is the part that
3 tapers down from the body, down to the small part, similar
4 to an ice cream cone.

5 Then you have got the tubular guard, the baffle.
6 You have got the overhead, the outlet at the top which
7 you call -- to keep the rain out. Then you got some of
8 them with the rain cap on top. Then you got what you
9 call an inlet, which is a transform -- a squared round
10 going into the body part of it, what you call the inlet.

11 Q Let's take the cone that you mentioned first.
12 What work do you do in making that cone?

13 A That cone, you got to go make your layout.

14 Q How would you make the layout?

15 A First of all, you have to see what size actually
16 are the body, because the body actually is the basic
17 size. Then the cone tapers from the body, so ordinarily
18 we have to get the diameter, which is the distance across.
19 You multiply that by 3.4, which will give you your
20 circumference around it. Ordinarily you will try to
21 break it up into as many parts that you can figure you
22 can get out of it, you know, the various types of sheets
23 you have. There we use, like the biggest sheet we could
24 use, like 48 by 120. So ordinarily if it was a big enough
25 cone, we would have to try to break it down so you could

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figure you could get it out of that particular sheet.

Q So after you have taken the measurements on the cone, what then do you do?

A After you take your measurement on your cone, you make your layout. You check out your piece and see how many pieces you need for breaking it up and see -- to make up the circumference. After that, you make your layout for your cone.

Q How is that done?

A We use radial line development for that. You make your layout and you break it up, which you would use -- you have to, you know, use a half layout pattern for it, to make your development.

After that you figure out, you take your trammel --

Q What is a trammel?

A Your trammel point -- it's usually in the place of small dividers, where dividers can't be used, you use a trammel, because of long areas of radius and different things, you know.

So we use that for making the cone.

So after you strike that, you take your ruler, you know you are going to break it up, you write down how many pieces you are going to break it up into, and

1 what the measurement will come out to. So you take
2 your strap rule and strap it. You can strap on the one
3 end, at the large end, and take a straight edge and bring
4 it right down to where your apex is at and ordinarily
5 you have got your bottom measurement.
6

7 Q These measurements that you are taking and these
8 lines that you are drawing, what is drawn on?

9 A Oh, I have seen some people draw it on hard
10 cardboard paper, some kind of special paper they lay out,
11 but most of the time we use a very light sheet, something
12 like 26 -- well, the lightest, more or less, 26 gauge.
13 We use that for our pattern. That is just for pattern .

14 Q For making the pattern on sheetmetal, and you
15 draw this all out on sheetmetal?

16 A Right.

17 Q Once the pattern is laid out on the piece of
18 sheetmetal, what then would happen?

19 A Then you -- well, that procedure you have to go
20 through, make all your rivet holes because we use rivets
21 to make the cone, to join the cone together. You got all
22 your rivet holes off the pattern, even off what gauge
23 sheet you are going to put it on, and after that you get
24 all the amount of pieces that you need; then you take
25 what you call, we used to use a Whitney punch, and you

1 punch all the holes in the cone, on the edge, what number
2 you allow for it.

3
4 After that you go and we use what you call a
5 hand brake or either the power brake, to kink the cone,
6 to make the full radius of each piece. So after that
7 we start joining them together. We would more or less
8 use two men to join it together, one man on the dolly
9 part of it, one taking the rivet through, the other man
10 taking a hammer and dress the head up, you know.

11 Q Up to this point, what types of tools have you
12 used in performing these various facets of work?

13 A Your major tool that you use are really a
14 square, your rulers, you got four-foot rulers, you got
15 six-foot rulers, and then you got your tape rulers, you
16 got your aviation shears, left and right, you got your
17 bulldog shears, you got your scriber, you've got your
18 hammer, you've got your Spencer punch, you've got your
19 dolly bar, those things that you actually need.

20 Q What machines, in addition? I take it these
21 are all hand tools.

22 A Those are hand tools.

23 Q Do you use any machines up to this point?

24 A Well, on that particular cone you use more or
25 less the hand brake because the majority of the stuff you

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Mitchell - direct

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use is not really quite in use on that, only use one particular small machine, what you call a hand edge turner, it turns the end, what we used to call a crumper and we use about three or four head of guys together, after we get the cone together, and they lift the cone up in the air -- it's very huge, according to what size you make them -- lift it up and one man turn it until we can get that edge turned out so that the edge will be able to fit in the body part.

Q Now, after you have put this cone together, you put in the rivets, and you said that you dress the heads; what would happen next?

A Rephrase that question.

Q You put the cone together, the parts together, and I believe you put the rivets in, and then you said you dress the heads, right?

A Yes.

Q And what would happen next?

A After we put the rivets in, therefore now you are ready, what you call a little small collar have to go on the other small end of the cone, that's what you call the small end part that go into the dust box, tail collar, what we call it.

After that we put on, then you get ready to put

the cone onto the body, but therefore the body have to be finished, have to go through the same procedures. You got to put your tubular guard, your baffle and all those things in the inside of the cone, I mean, inside of the body part.

After that has been performed and with the top put onto the body, then you take the cone and the body part and join them together. We use the body part and we form up the body a little bit different from the cone. Sometime you can take the body and put it in a roll and roll it. Then sometime you kink it, you know. It's various ways that you can put the body together.

Q Now, in making the body, have you used the same tools? What tools have you used to make the body?

A Those actually are the same tools.

Q Have you used any other tools or machines?

A There's many other machines. You have got your unit shear -- that is required to cut out the cone, too, because of the radius, when you lay it out, you are required to have a unit shear to cut that out. There is various other tool that you use. I can name a lot of tools for you.

Q What are the other machines, if there are other machines, that were in the Rotodyne shop?

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2 A Rotodyne was one of the modern shops. They
3 had quite a bit of everything.

4 Q Could you name some of those machines?

5 A They had what you call, I think it was a twenty-
6 foot brake. It's set six feet in the ground. Then they
7 had power rollers. They had rollers that they could --
8 the roller would turn so slowly it would take two hours
9 to roll half a sheet -- rather, half an inch plate, and
10 they had power shears, some of all kinds, and they had
11 Pittsburgh machine, they had an edge machine, they had
12 many other machines, because they were one of the real
13 modern shops.

14 Q Okay, that's enough. Now, you mentioned that
15 part of this dust collector was an inlet.

16 A Inlet.

17 Q What kind of work did you perform in making the
18 inlet?

19 A The inlet is the part that goes in two parts.
20 It fits into the body. The inlet, what you call a thread-
21 around, which is flat on two sides, flat on the side and
22 flat on the top.

23 Q And what type of skills did you need to make
24 the inlet?

25 A The inlet, it has what you call squared around,

1
2 you have to go through triangulation development to develop
3 that particular pattern.

4 Q I believe that you mentioned that when you were
5 in Rotodyne you made both round duct and square.

6 A Right.

7 Q In your opinion, what is the more difficult to
8 make?

9 A Round work can give you a real headache.

10 Q Why is that?

11 A Because it's much harder.

12 Q How is it harder?

13 A It's more harder to learn and everybody just
14 don't learn it, because you have got to really put your
15 mind right down to it to learn it, and fortunately I
16 was able to learn practically, you know, the majority of
17 things.

18 Q You testified that in 1969, thereabouts, you
19 became a member of Local 28. What companies have you
20 worked for since you have been a member of 28?

21 A The first shop I worked for was National Sheet-
22 metal.

23 Q How long was that?

24 A That was in the beginning of -- rather, the latter
25 part of 1969 and the first part of '70.

1 13 jksr

Mitchell - direct

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2 Q Where did you go after that?

3 A I leave from there, I went to Brook Sheetmetal.

4 Q How long were you at Brook?

5 A I stayed at Brook, I think it was about a year
6 and a little better, I believe. A year or better. I
7 think it was a year or better.

8 Q . And where did you work after that?

9 A I leave Brook, I went to a little small company
10 called M & E. I stayed there for one week. Then I leave
11 and I went to Federal Sheetmetal where I am now.

1.4

12 Q When approximately did you start at Federal?

13 A I think it was somewhere around April '71 or --
14 I think it was '71, I believe, '71 or '72.

15 Q What type of work have you done at Federal,
16 for instance?

17 A Federal, since I went to Federal, I was more
18 or less on the cutting bench. I went on the floor,
19 assembler. I more or less got around to do a little of
20 everything, you know, to feel my way around. As a matter
21 of fact, I have been on the outside for them for about
22 three months I think it was.

23 Q What were you doing on the outside?

24 A I was installing ducts.

25 Q What kind of ducts were you installing?

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A Rectangular, because this is about more or less to finish up the job, the job was most nearly finished.

Q Did you install any round duct?

A Not on that particular job.

Q Are you performing a specific job now at Federal?

A Right.

Q What job is that?

A At the head cutter bench.

Q Would you describe what the head cutter bench is?

A Actually the head cutter, from my point of view, is the man that know the work and the man that is fast and qualified for it.

2 Q How many cutters were in Federal?

3 A Well, Federal have I think about four or five
4 main cutters and they are always putting on more, you
5 know.

6 Q What did you do at the head cutter's bench?

7 A Steady laying out, all day long.

8 Q What type of things were you laying out ?

9 A From square, rectangular to rounds, into
10 square, drop cheek elbows and reducing offsets, all kinds
11 of transitions.

12 Q What kinds of fittings, can you name some
13 of the fittings?

14 A I just named them, square to round, round
15 elbows, drop cheek elbows, reducing offsets, plenums.

16 Q The work that you are doing at Federal
17 now, have you laid out anything that you never laid out
18 while you were in Local 400?

19 A No.

20 Q Have you fabricated duct work since you have
21 been at Federal?

22 A Yes, I did.

23 THE COURT: Mr. Corsi, we are going too
24 again. I will let him answer it. We got the picture.

25 Q What kind of duct work have you laid out?

arjw 2 Mitchell-direct

A Assembling?

THE COURT: Laid out.

A I laid out big transformers and square to round, regular elbows, round elbows, plenums, many other things.

Q Are there any tools that you are presently using now that you did not use when you were at 400?

A No.

Q Have you learned any skills since you have been in 28 that you did not know when you were in 400?

A No.

Q Are you satisfied with the training that you received in the apprenticeship program of 400?

MR. BOGEN: Objection, your Honor.

THE COURT: I will sustain it.

A Yes, I am.

THE COURT: You can't answer when I say I sustain the objection. If I say overruled, you can answer.

The answer may be struck.

Q After you became a member of Local 28, did you take any more schooling or receive any more schooling?

A No.

Q What are you presently earning at Federal?

1 arjw 3 Mitchell-direct

2 A I think it is 11.69, I think it is.

3 Q Is that the standard wage rate in the collective
4 bargaining agreement?

5 A Yes, it is.

6 Q Do you know what premium pay is?

7 A Well, premium pay could be anything over the
8 amount.

9 Q Do you receive any premium pay?

10 A I receive it.

11 Q Did the training and schooling that you
12 received in Local 400 adequately prepare you to do the
13 work that you are presently doing?

14 MR. BOGEN: Objection, your Honor.

15 MR. CORSI: Your Honor, I don't see the
16 objection. I am asking for the witness' perception of
17 what his training was and has it prepared it for what he
18 is doing.

19 THE COURT: I will let him answer.

20 Objection overruled.

21 A Yes, it did.

22 Q Mr. Mitchell, do you know who Mel Farrell
23 is?

24 A He was the Union president.

25 Q Which Union?

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Mitchell-direct

1501

A Local 28.

Q Did you ever meet Mel Farrell?

A Yes, I did.

Q When was that, sir?

A I met him before I came in the Union and
after I came in.

Q Before you came in the Union, where did you
meet him?

A At his office.

Q Why did you go to his office?

A I went down because I heard that there was
some guys working on permits.

Q When you say permits, what do you mean?

A Well, you can work in any other construction
local, I think it was. We are affiliated with all the
locals, construction locals, out of town. You were able
to work on permit because they had a lot of work in New
York.

Q When approximately was this?

A I think it was in 1969.

Q You went down to the office and what happened?

A We asked for a permit and --

Q Did you go alone, by the way?

A No. As a matter of fact, we shut down the

1 arjw 5

Mitchell-direct

2 whole sheetmetal department in Rotodyne, they were stranded
3 that day because there was really no work turned out be-
4 cause we take care of everything in the sheetmetal in
5 Rotodyne.

6 All of us went down.

7 Q Who is all of us?

8 A Myself, Henry Woods, Roosevelt Johnson,
9 Leroy Floyd, Reggie -- I don't know his last name, Raymond
10 Brown; I think that is about all the names.

11 Q You went down and what happened when you went
12 with these other fellows down to the office?

13 A We asked for a permit and I think he said
14 he wasn't giving out any.

15 Q Did you say anything else to him?

16 A From my recollection, I don't know if there
17 was anything else but he said there was a test going to
18 be given, and this is the only way we are going to work.
19 We had to pass the test.

20 Q Did you tell him that you were a member of
21 Local 400?

22 A Yes, I think he had known it.

23 Q Did any of the men who went down with you
24 get permits?

25 A No.

1 arjw 6 Mitchell-direct

2 Q After this time that you met with Mr. Farrell,
3 what happened, if anything, after that?

4 A After that time we all applied for the test.
5 We took the test, we passed it.

6 Q When was that, sir?

7 A I think it was around September or November
8 when the test was given of that 1969.

9 Q After you passed that test, what happened?

10 A After we passed the test we got notice to
11 come, where to take the practical test.

12 We took the practical test, we passed it and
13 I think it was a week or so and then we -- I don't recall
14 the exact length of time after -- required us to pay the
15 initiation fee.

16 Q How much was that, sir?

17 A I think it was something, supposed to be
18 \$800. In other words, we had some money that we had from
19 Local 400 so we had to get a transfer from 400, the
20 president of Local 400, and I think it was a deduct of
21 \$24. So we had to pay \$776.

22 Q At the time that you took that test you were
23 still a member of Local 400. What was your status, were
24 you an apprentice or journeyman?

25 A I was at the edge of being finished up.

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Mitchell-direct/cross

1504

Q What?

A Finishing up the school time, which is the fourth year in apprenticeship of Local 400.

Q At that time you were in Local 400, were you given an identification number?

A Yes.

Q From the International?

A Right, I.A.

Q When you became a member of 28, were you also given an identification number?

A No, we had the same identification number from Local 400.

MR. CORSI: One second, if your Honor please.

THE COURT: Right.

(Pause)

MR. CORSI: That is all, your Honor.

THE COURT: All right.

MS. GROSS: No questions.

MR. TUMINARO: I have no questions.

MR. ROTHBERG: No questions.

CROSS EXAMINATION

BY MR. BOGEN:

Q Mr. Mitchell, before you worked as a Longshoreman, had you had any other employment?

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Q You were attending high school?

A Right.

Q What high school?

A St. John's High, Cameron, South Carolina.

Q Any special courses of study that you had there?

A Agricultural, and that was the most and physical ed, regular subjects.

Q Academic subjects or, any trade or vocational subjects?

A I would say no, sir. That is agricultural because they don't give certain things like they give up here.

Q Did there come a time when you graduated and left the high school?

A I didn't graduate. I came up here and then I went to school up here at night.

Q When you came up here and went to school, what school?

A Central Evening High School.

Q How many years did you go to this school?

A For, I think, a year.

Q What courses did you take?

A English, Math, Geometry, regular subjects.

2 A Reading and different things, history.

3 Q Did you receive grades in the courses you
4 took?

5 A Yes. I think it was a grade.

6 Q Did you receive all passing grades?

7 A Yes.

8 Q Were your grades in mathematics better than
9 your other grades?

10 A No. I wouldn't tell you that now, because I
11 figure if I was so good I wouldn't stop at sheetmetal.

12 Q You would go on to something?

13 A I would go on to something.

14 Q Did you take mathematics the entire year you
15 were up here?

16 A Yes, I did.

17 Q A full year?

18 A Yes, I think I did.

19 Q How many nights a week did you go to school?

20 A I think I went something like four nights, I
21 believe it was.

22 Q How many hours a night?

23 A 7:00 to 9:00.

24 Q Was mathematics taught every day, something
25 to do with mathematics?

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Q And then you took a year up here?

A I took a year up here.

Q Did you ever receive a document or paper called a High School Equivalency?

A No, I didn't.

Q When you were going to school in the evenings, were you working someplace?

A At Rotodyne, the old company named Brooklyn Blower.

Q What year did you come to New York from the South?

A I think it was 1962, I think it was; 1960 or 1962.

Q Now, you weren't in Local 400 at that time?

A No.

Q You told us you worked from 1963 to 1965 as a longshoremen, do you recall that?

A I say roughly, in and out.

Q The time you said you went to school, that was right when you came up, would it be correct to say you were going to high school at night and you were a member of the Longshoremen's Union working as a longshoreman, is that correct?

A Right.

2 a week or so.

3 I got a job at another little company.

4 Q A sheetmetal company?

5 A No, a metal company but making up things
6 like, let's see what were they making up? I only worked
7 about two days. I can't remember what they were making
8 up.

9 Q Some kind of sheetmetal?

10 A Dealing with metal because it was chrome.
11 Put in certain chrome, a lot of acid being used around
12 there.

13 Q Do you recall what you did for this company?

14 A Like push skids and different things. It
15 wasn't my kind of work.

16 Q Then you left?

17 A Yes.

18 Q I think you said that Rotodyne before was
19 originally named Brooklyn Blower?

20 A Right.

21 Q After this two or three days you went and
22 were actually hired by Brooklyn Blower?

23 A That is where I went and there was Roosevelt
24 Johnson as a mechanic.

25 Q He was already a mechanic there?

1 arjw 29
2 A Right.

3 Q Did he tell you about the job?

4 A No. I happened to walk in, I was looking
5 for a sheetmetal shop, you know.

6 Q Sure.

7 A So I went in and I saw them guys working there.
8 This is the first time I seen a black mechanic. I have
9 seen white mechanics doing work and I saw this guy making
10 up different fittings and I said, Wow, I never saw a black
11 guy do the work before.

12 So I went in there and I was looking for the
13 foreman. So the foreman, Harold, he told me, he hired
14 me.

15 Q Right there?

16 A Right.

17 Q You told him the work you had been doing?

18 A I came from a sheetmetal shop.

19 Q Did you tell him the work you did in -- the
20 marine work?

21 A Right.

22 Q Did you fill out an application of some sort?

23 A Right.

24 Q Did he ask you for your education and background
25 at that time?

2 THE WITNESS: Brooklyn Blower became Rotodyne.

3 MR. BOGEN: Thank you for correcting me, Mr.

4 Mitchell.

5 Q There was no change in where you were working or
6 the kind of work you were doing?

7 A No.

8 Q You mentioned before that you were working in
9 the blowpipe. You used the word blowpipe industry. Do
10 you recall that?

11 A Right.

12 Q Does the blowpipe industry, the work you are
13 doing, consist of the industrial exhausts? Is that the
14 kind of work you were doing?

15 A That's true.

16 Q Throughout your time that you worked with Brooklyn
17 Blower and then Rotodyne, you worked on industrial exhaust,
18 is that correct?

19 A That's true.

20 Q You didn't work with any air conditioning, heating
21 and ventilation systems, did you?

22 A Yes, we did.

23 Q You did do that?

24 A Yes.

25 Q When did you do that?

1 3 jksr Mitchell - cross

2 A What happened, when you say blowpipe, that's
3 just a name, but whatever they get you have to turn out.
4 I think they were limited on the amount of air conditioning.
5 That was an agreement between the two unions. I don't
6 want to get involved with that. But we had to turn out,
7 the sketchers, the stuff they give us, whatever, we turn
8 it out; it makes no matter what, you know, the amount of
9 duct, what ventilation, for air conditioning or regular
10 ventilation, we get it out.

11 Q You mentioned whatever the sketchers gave you.
12 None of the members of 400 Blowpipe were sketchers, were
13 they?

14 A Pardon?

15 Q None of the 400 members in the blowpipe were
16 doing sketching or drafting, were they?

17 A I don't think so. I don't think they have the
18 system set up that way.

19 Q Did the boss do the drafting or sketching?

20 A They had certain men that work in the office
21 do the sketching. They are not regular -- I don't think
22 they are 400 men.

23 Q How many people were working at Rotodyne when
24 you were there?

25 A Oh, let's see, Rotodyne at full swing, I think

2 A I think so. I'm not sure, but I think so.

3 Q At that time you were working full time, is that
4 correct?

5 A Correct.

6 Q As a matter of fact, was it busy?

7 A It was busy.

8 Q You were very busy with 400 at that time?

9 A Yes, it was busy.

10 Q You said Mr. Farrell said you couldn't come in
11 to do work in 28 at that time but a test was going to be
12 given shortly afterwards?

13 A True.

14 Q Did he tell you where the test was going to be
15 given?

16 A I think he said the test was going to be given
17 so, in other words, we had -- we know where and what,
18 how to get through by going to do that, but I think he
19 say you have to put an application in at the office there.

20 Q He gave you an application?

21 A No. I think he say something about application
22 had to be filed at the office.

23 Q At the office?

24 A Right.

25 Q I want to take a step sideways. Did Mr. Farrell

1 11 jksr Mitchell - cross 1538
2 tell you at that time that no permits or identification
3 slips or no people were coming in except through the test?
4 A I'll put it this way: He always say the only
5 way we could get in we had to take that test.
6 Q Did he mention anything about no one else coming
7 in except through the test?
8 A No, he didn't say, not as I recall. As far
9 as my recollection, I cannot remember that, you know.
10 Q Did you know about the test?
11 A As far as my recollection, I say we know about
12 the test. Maybe some other guys have different testimony
13 against that. As far as mine, I think we know about it.
14 Q You think?
15 A I think. I'm not sure.
16 Q How did you know about it?
17 A I think Roosevelt Johnson's wife heard it on the
18 news, because it was advertised over the television, over
19 some kind of line that came on the weekends.
20 Q Was that over one of the --
21 A One of the networks.
22 Q -- networks, and they advertised a test was
23 going to be given?
24 A Right.
25 Q Do you know if it was advertised in the newspapers,

1
2 receive a notice when the test was going to be given?

3 A Right.

4 Q Was that by mail or phone or what?

5 A By mail.

6 Q By mail you received it, and then you say you
7 went and took the test?

8 A Yes.

9 Q Was it a written test?

10 MR. BOGEN: Withdrawn.

11 Q What did the test consist of, Mr. Mitchell, in
12 '68? Was there a written part and a practical part?

13 A The test was -- it was pretty far out. In other
14 words, you had to have more or less a college degree to
15 really do anything on that test.

16 Q In the written test?

17 A Right. That was the first one.

18 Q Did you pass the written test?

19 A First of all, you couldn't get past the written
20 test to get to the practical.

21 Q You didn't pass the written?

22 A No, I didn't.

23 Q At that time had you ever had occasion --

24 MR. BOGEN: Withdrawn.

25 Q And you were notified that you didn't pass the

1 Q Did all the fellows take the '68 test?

2 A No, all didn't take it.

3 Q How many took the '68 test?

4 A I think myself, Leroy Floyd, Henry Woods, and
5 I think Raymond Brown. I'm not sure Raymond Brown took
6 it, but I think he took it, too.

7 Q Anybody else?

8 A Not as I know. I couldn't say for sure.

9 Q Do you know if any of the other members of
10 Local 400's Blowpipe Section took the 1968 test?

11 A Not as I know. I don't think so.

12 Q You say that in preparation for the '69 test
13 all the men tutored themselves, is that correct?

14 A That's true.

15 Q This was based on some of the knowledge, the
16 information you recall from the '68 test, is that correct?

17 A Right.

18 Q Where did this tutoring take place, Mr. Mitchell?

19 A It took place at a little place on Fulton Street.
20 It's what you call the Joint Apprenticeship, but now they
21 moved a little further down Fulton, Nostrand, but it
22 was near Utica Avenue, right down near Boys High School,
23 because they tore that area out to build that project.

24 Q What course or how did this tutoring take place?

A Pardon me?

Q What was the procedure in this tutoring that you were talking about at the Apprenticeship School?

A We went through different mathematics and square roots and different things like that, things that we figured that would benefit us in taking the test.

Q For the test?

A Yes.

Q Who went through it with you, your teachers?

A We had one of the recruitment trainers from there.

Q Who was that, do you recall?

A A guy called Johnson. I think Brian Johnson. I am not sure. I know his last name was Johnson.

Q Was he from the apprenticeship school?

A He was working at that particular school.

Q Was he a regular sheetmetal teacher or a different teacher?

A He would deal with anything. He would deal with a plumber, an electrician, he would deal with anybody, whatever test you are going to take.

Q Was he black?

A Yes, he was.

Q Was he involved with general recruitment for black mechanics and that type of thing?

A He was involved in general recruitment for any minorities who are well able and had the ability to go forward to take a test and who was willing to take a test.

Q And he ran this tutoring program?

A Right.

Q How long a period of time did the program run?

A I am not sure, but I think it lasted two weeks.
I am not sure.

Q Did you go every day to the program?

A Yes.

Q How many hours a day did you go?

A I think we spent about an hour or two in the afternoon.

MR. BOGEN: Your Honor, may we suspend for a moment until the witnesses leave the room? I believe these are witnesses.

THE COURT: Yes.

[Pause.]

THE COURT: Do you have any other witnesses in the courtroom?

MS. GROSS: No, your Honor.

MR. ADAMS: I don't believe so.

THE COURT: All right, Mr. Bogen.

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2 Q And did they prepare you for the mathematics
3 that was used?

4 A Right.

5 Q Did they prepare you for some of the sheetmetal --
6 MR. BOGEN: Withdrawn.

7 Q And what else did they prepare you for?

8 A . Put it this way, they only had to brief us on
9 certain math because everything else we knew.

10 Q Was there anything else they taught besides the
11 math than what you described?

12 A We all got together on different things that
13 involve sheetmetal and more or less briefed each other on,
14 what one person probably didn't know of, we more or less
15 briefed each other on. Everybody got up and said whatever
16 they know concerning different problems.

17 Q During the course of the class did you get up
18 and talk about sheetmetal problems and sheetmetal work
19 and then Mr. Johnson would discuss or help teach you or
20 help you become familiarized with it?

21 A His part really, he had no -- put it this way,
22 we know more about the work than he know, but come down
23 as far as certain math, he probably was a little bit more
24 familiar because he probably was, you know, dealing with
25 a lot of that, you know.

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2 A Yes, we was.

3 Q The other people -- I think you said you were,
4 what is the terminology you used before, the four of you
5 were way ahead of the other group, is that correct?

6 A True.

7 Q And the other people, could the other people
8 pass a test, either the written or practical, as far as
9 you were concerned?

10 MR. ADAMS: Objection.

11 THE COURT: I am going to sustain the objection.

12 Q The other people who didn't come into 28, they
13 couldn't do the work as well as you did or have the
14 knowledge you have, is that correct?

15 A Put it this way, some of the guys they weren't
16 interested at that time so, in other words, I didn't know
17 exactly what he could have done, you know, because whoever
18 took it and put their mind to it passed it. So I can't
19 speak for the rest who didn't take it at all.

20 Q But you knew the work, you knew the caliber of
21 the work, the quality of the work or the kind of work they
22 were doing compared to the work that you and Johnson
23 were doing, didn't you?

24 A That's true.

25 Q And you, Johnson, Wood and Floyd were way ahead

1 of them, weren't you?

2 A We was the head cutters in that particular
3 job, yes.
4

5 Q I think you told us your first job was with
6 National Sheetmetal, is that correct?

7 A Yes.

8 Q And there came a time when you went to Brook?

9 A True.

10 Q Were you at that time in 1970 laid off or did
11 you quit National?

12 A I quit.

13 Q How long did it take you to find employment with
14 Brook?

15 A I leave National on a Friday, you know, knock
16 off on the weekend, Friday. I went up to Brook that
17 Saturday and I spoke to the boss, which was the president
18 of Brook, Nat Gold. I spoke to him and I told him, you
19 know, my little background, regular run-up, like any other
20 sheetmetal worker would do, and I guess he was surprised
21 to know that I actually could take certain positions as
22 I did, because I guess he probably, you know, figured that
23 I couldn't do it, but I went.

24 Q Did you start Monday ?

25 A Well, I give them notice.

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30 jksr

Mitchell - cross

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Q You gave National notice?

A Yes, I had to give them notice. I didn't want to just run right off, so I gave them notice, I think a week notice, and I leave.

Q And you didn't lose any work time?

A No, I didn't lose no work time.

Q How did you get to Brook to look for a job?

A You know, shopping around. I heard Brook is in the Bronx, so I went, took off that Saturday, and I went riding.

Q Is that how the other sheetmetal workers get their jobs?

A Well, some I would say.

Q They go shopping around?

A Yes.

Q They find out who's got work and where to go?

A That's it.

Q Is that what you did?

A That's what I did.

Q Nobody sent you to Brook, did they?

A No.

Q That was one of the shops that you knew about?

A That was the shop I knew was busy.

Q How did you know it was busy?

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A They had quite a bit of big jobs like West Point, the Kennedy Airport, big buildings here in Manhattan, too. Everybody looking for a little more money.

Q And you were looking for a little more money?

A Yes.

Q You went shopping?

A I went shopping around.

Q And you got this job?

A Yes.

Q I believe you stayed with Brook for about a year, you said?

A I would say maybe a year, a little better. A year I would say.

Q There came a time when you were terminated at Brook, is that true?

A Well, I terminated that.

Q You stopped?

A Yes.

Q You weren't laid off?

A No, I was never laid off no jobs.

Q You decided to quit Brooks?

A Right. As a matter of fact, I didn't quit exactly when I leave the shop. I asked the boss, I said I wanted to go in the outside because I wanted to, you

1 know, do a little outside work, so he asked me, he said,
2 okay, he said you could be -- let's see the word he used
3 -- he said you could be a master, he told me.
4

5 Q A master?

6 A He told me I could be a master of the work.
7 I said, well, you know, how it is, I want to get around.
8 In other words, I wanted to get out of the shop. I
9 didn't want to tell him I was going to leave, so I told
10 him I wanted to go on the outside. So he told me okay.

11 Q He said he was going to let you go on the outside?

12 A When I was ready to come back to the inside
13 to let him know. I was cutting in the inside.

14 Q I think you said when you first went to National
15 you worked inside or outside?

16 A Worked inside.

17 Q Did you do the various jobs in the inside,
18 cutting, bench work, that type of thing?

19 A Put it this way, the foreman is Herbie, and if
20 he likes you, you can get away with a lot. If he don't,
21 you're no better than nobody else.

22 So one of the guys he had really liked, Leroy
23 Floyd, Leroy Floyd cut the whole time and leave there.

24 Q The other people --

25 A Worked on the floor.

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Q Worked all over the floor?

3

A Right.

4

Q What jobs did you work in National ?

5

6

A I was on the assembly, assembling duct, putting duct together.

7

Q What other work did you do?

8

9

A Well, that's all right then, assembling, putting duct together and putting line in duct, different things like that.

10

11

Q Did you work on the outside at all for National?

12

A No.

13

Q If you wanted to, could you have gone to work on the outside for National, if you know?

A Put it this way, I am really an inside man.

16

Q You prefer to stay inside?

17

18

A That's all steady inside. I can go from A to Z in the inside. You don't have nothing I can't do in the inside.

19

20

Q When you worked for National, Brook, did you go from A to Z to do all the work you could do?

21

22

A At National, I was just on the assembly, putting stuff together. But I went to Brook --

23

24

Q What happened at Brooks?

25

A I told the boss I want to cut. He said okay, you

2 can cut. I was cutting. When work got slow, I might
3 knock a few fittings together, but I was more or less
4 cutting the whole time.

5 Q If it got slower, did you do other work?

6 A Yes.

7 Q What other work did you do?

8 A I did assembly, working the lining, working
9 various departments they have. I could practically do
10 anything.

11 Q You go from department to department?

12 A Yes.

13 Q You could do that work?

14 A Yes.

15 Q And you did that work there?

16 A Yes.

17 Q Did the other people also go from department to
18 department to do that work?

19 A That's true.

20 Q Was that true in National, if Herbie liked you
21 or didn't like you?

22 A That's it. As a matter of fact, when I first
23 went there, put it this way, when I first went there, that
24 particular morning after the test, when everybody was
25 supposed to go to work, Eddie O'Reilly sent us. Herbie

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Mitchell - cross

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took Johnson and he didn't want to take Leroy and I.

Q But that was straightened out in some way?

A Straightened out. We called the union hall, O'Reilly got on the phone and told Herbie to hire us and pay us from eight o'clock.

Q Did he?

A He paid us.

Q You said Eddie O'Reilly. Who is he, recording secretary?

A Right.

Q There came a time you said you wanted to leave Brooks. Any special reason you wanted to leave Brooks?

A I was getting a little bored. I figured, well, I am looking for a little more money, overtime, getting a little slow, so I want to go somewhere else.

Q Were you receiving premium pay or pay above the scale at National?

A No.

Q Were you receiving over the scale at Brooks?

A I can't think for sure. I can't say for sure for Brooks.

Q Were some of the people receiving over the scale at Brooks that you know of?

A Every shop, every shop that happen; put it that

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way.

Q Has that happened since you have been in the industry?

A Every shop, people get paid over the scale. If you're good enough, you can demand.

Q When you say you're paid over the scale, how is that pay over the scale made, if you know?

A Well, most shops paid over the scale; you got your regular amount on your pay stub, but what's extra --

Q They give you overtime extra?

A Some guys get overtime, some don't, and some guys get the regular, so much on the hour, you know.

Q When they are paying you the premium pay, they put down the overtime; that is pay they give you, but you don't work it, do you?

A In some cases they probably work that way.

Q In some cases what?

A I say some cases it works that way.

Q Do you know if the foreman and superintendent gets paid that way with the overtime extra?

A Some shops --

MR. ADAMS: I am going to object to these questions as being really outside the scope of the direct examination and I know that rule isn't a hard and fast

1 rule, but I think in this particular case it has its
2 application and should be applied.

3
4 MR. BOGEN: If your Honor please, I think
5 the question of payment of wages and payment of premium
6 pay was raised in direct, and I certainly can explore
7 this with this man. If he doesn't know anything about
8 it he can say so.

9 If he knows, he can state it.

10 THE COURT: Yes. Mr. Bogen, if you don't
11 mind, I think we will take a short recess.

12 MR. BOGEN: No, your Honor, I don't.

13 THE COURT: Step down and don't discuss it
14 with anybody.

15 [Recess.]
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1 ARJW 1

Mitchell-cross

2 Q Mr. Mitchell, you recall right at the time
3 we took a break we were talking about premium pay and I
4 asked you is overtime given as premium pay and you said
5 in some shops they do it.

6 A Yes.

7 Q Whom, if you know, would give overtime pay,
8 what categories of journeymen?

9 A These men that actually more or less runs
10 the shop like main cutters.

11 Q Main cutters get overtime premium pay.

12 A Some of the brake men, according to what you
13 are doing.

14 Q They receive overtime pay?

15 A If he can get this bargaining with the boss.

16 Q Would the foreman get premium pay by way
17 of overtime?

18 A I guess so too.

19 Q Is there any other category that would get
20 such overtime pay in that shop? Anybody else that the
21 shop who might get overtime pay as premium?

22 A Put it this way. It is all in what you
23 bargain for.

24 Q Would sketchers or draftsmen get overtime
25 pay?

1 arjw 2

Mitchell-cross

2 A I guess so.

3 MS. GROSS: Mr. Bogen was asking the witness
4 to speculate on the basis of knowledge and now he is
5 phrasing the question in terms of might he get overtime.
6 Now he is asking would he and I would just like to make
7 sure that the witness understands the distinction between
8 the question when he says he would and he might.

9 MR. BOGEN: The witness indicates he has
10 some knowledge and in some areas he doesn't. He is
11 testifying as to knowledge. I will clear that up.

12 Q Mr. Mitchell, what you told me is based on
13 your own knowledge?

14 A That is true.

15 Q With respect to the men who work outside,
16 to you knowledge, would certain people on the outside
17 receive premium pay by way of overtime payments?

18 A I guess it would be the same as inside.

19 Q Would a super on the outside get overtime
20 pay as a premium?

21 A I guess so. I guess he would because he
22 was probably in charge of the jobs. In other words, he
23 deserves more.

24 Q Would the foreman receive premium pay on the
25 outside by way of overtime?

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arjw 3

Mitchell-cross

A I guess it all follows right on down the line. I suppose he would deserve more too. Mostly the people that are in charge of certain things and are over other people.

Q That would be inside and outside?

A Yes.

Q Then I believe you told us some people who are inside would receive overtime pay. Any other additional people other than the super on the outside who would receive premium?

A I couldn't say for sure. In other words, it is like I say, if you are able to bargain for it whoever you are working for.

Q There is bargaining -- have you finished?

A You may go on.

Q Thank you.

Is the arrangement for paying premium pay by way of overtime, is that a general or regular thing regardless of whether there is employment or unemployment in the industry?

A Now, that is putting it different. Right now there is a bad situation and I am sure there is a lot of cutting on a lot of people, certain pay and different things like that.

1 arjw 4

Mitchell-cross

2 Q You presume they cut down the premium?

3 A I think so.

4 Q You were in the industry in 1969 through
5 1972, is that true?

6 A True.

7 Q That is when you would agree times were
8 better than they are now?

9 A It was.

10 Q At that time, based upon your personal know-
11 ledge, would premium pay have been paid by way of overtime
12 to people?

13 A I guess in certain cases it was.

14 Q And the companies that you worked for, was
15 it paid this way?

16 A I can't say for sure. Now, when you say
17 premium overtime, and getting over that scale, I think
18 there is a slight difference in that because premium, most
19 times people just pay you a certain amount of money over
20 the scale and that goes on.

21 But when it comes to overtime, if you are
22 making overtime I don't think to my knowledge -- maybe, I
23 don't think, they more or less double that, the ones that
24 pay.

25 Q We left off in discussing your experience as

1 arjw 5

Mitchell-cross

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2 a 28 member after your leaving Brooks, quitting Brooks.

3 You weren't laid off?

4 A No.

5 Q That was sometime in 1971, is that true?

6 A 1971 or 1972, I think it is. I can't say
7 for sure.

8 Q Then after Brooks, where did you work, if
9 anyplace?

10 A A little shop called M & E.

11 Q How did you get to M & E if you recall?

12 A I went by there, I heard the shop was in the
13 area because I wasn't living too far, this is in Brooklyn,
14 on East 89th Street. I went by the shop and happened to
15 see a face that I actually know and I knew him very well
16 from the experience of working in Brooks, Hobie Serena,
17 he was in charge of the shop.

18 In other words, him and me worked together
19 before in Brooks, so I told him I am looking for a job so
20 he hired me.

21 Q Was Hobie a member of Local 28? Was he a
22 long-time member, to your knowledge?

23 A Yes.

24 Q You say he hired you?

25 A Yes.

1 arjw 6
2 Q Do you know if he was foreman or superintendent
3 that he could hire you?

4 A I guess he was acting the part of superintendent
5 of the shop.

6 Q How long did you work for M & E?

7 A I think it was a week.

8 Q Inside the shop or outside?

9 A In the shop.

10 Q What kind of work did you do in the shop?

11 A First part of the week I went on shear.

12 Q Shear?

13 A Yes.

14 Q Then where did you go?

15 A Cutting up metal. After, on the last part
16 of the week Mobie knew I could cut, he put me on the bench.
17 I start cutting.

18 Q The shear is not cutting?

19 A It is cutting metal from the tickets and
20 given certain squares, what you need to layout on.

21 Q How long did you work at that job?

22 A One week.

23 Q On the shear?

24 A On the shear? I think about two days or two
25 or three days.

arjw 7

Mitchell-cross

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2 Q How many men in the shop when you were working
3 there?

4 A Let's see, I would say 10 or 12 men.

5 Q They were working all types of jobs in this
6 shop?

7 A Everybody doing different things.

8 Q You went someplace else?

9 A To the bench cutting.

10 Q Did somebody take your place at the shear?

11 A I'm not sure, but I think I cut up a lot of
12 work they had on the shear. In other words, I cut out
13 and go on as much as I could and go on to something else.

14 Q Do you generally rotate or do different jobs
15 inside?

16 A The smaller shops you do rotate a lot.

17 Q Does everybody?

18 A Yes, in a small shop.

19 Q What do you consider a small shop?

20 A I would say M & E was a small shop.

21 At that particular time it was a small shop.

22 Put it this way, I never did work in real
23 small shops, that was the smallest.

24 Q You went to the bench. How long did you stay
25 on the bench?

1 arjw 8

Mitchell-cross

2 A stayed there the remainder of the week.

3 Q Did you quit or were you laid off?

4 A I was seeking a job at Federal at the particular
5 time I went to M & E.

6 Q This was a filler job?

7 A Filler because I went to Federal from the
8 outside, because I didn't want to go outside.

9 Q You mean you didn't like it?

10 A No.

11 Q You had worked outside?

12 A For Brooks for two weeks, when I left the
13 shop.

14 Q You wanted to go back? You told Federal you
15 would like to try outside?

16 A Right.

17 Q And they sent you outside?

18 A Right.

B2 19 Q You went on the outside and worked for two
20 weeks?

21 A Right.

22 Q What jobs did you work?

23 A Installing line and that is mostly the stack
24 line, we was working on.

25 Q What kind of work?

1 arjw 9

Mitchell-cross

2 A Installing regular duct, connections, different
3 things.

4 Q Did you work the entire time on this job
5 site for two weeks?

6 A Right on the job site, but doing like different
7 things.

8 Q What things were you doing on the outside?

9 A Running the stack line a while and then after
10 that we started running some fittings, regular fittings in
11 the ceilings.

12 Q That is installing?

13 A Right.

14 Q Did you do any cutting outside or fabrication?

15 A Yes, I do some. I did work with the bull
16 gang too.

17 Q What is the bull gang doing?

18 A That particular thing we was working with the
19 bull gang in putting the blowers up on the ninth floor.

20 Q Installing the large blowers?

21 A Taking them from the street, the crane was
22 lifting them up to the ninth floor and putting it in the
23 blower room in the area.

24 Q Did you do any cutting outside?

25 A Not much cutting you could do there.

1 arjw 10

Mitchell-cross

2 Q When you finished your two weeks, did you
3 request Mr. Gold to put you back on the inside or leave?

4 A I left.

5 Q If you wanted to go back inside, could you
6 have gone back?

7 A Yes.

8 Q Did the other people interchange back and
9 forth if they wanted to?

10 A I guess so.

11 Q Is that the normal thing if they asked they
12 would go out?

13 A It gets down to the same question, if you are
14 liked enough. If you are liked by your employer you more
15 or less can work a while there when times is good. If
16 he actually needs you, he probably will tell you to stay
17 here. But it is like they have this really full setup,
18 cutting crew, but just like making things run a little
19 faster, because I was turning out a lot of work there.

20 Q You say you left M & E, you left there
21 after a week on your own and went to work for Federal?

22 A True.

23 Q Did you lose any time between the time you
24 were at M & E and Federal?

25 A No time.

1 jw 11

Mitchell-cross

2 Q From this time I believe you told us before
3 April, 1971 is when you recall being hired by Federal.

4 A I think it was around that time, I believe.

5 Q From that time to the present time, have you
6 continued working for Federal?

7 A True.

8 Q Except for the strike -- do you recall the
9 strike in 1972?

10 A I recall the strike.

11 Q Except for the strike in 1972, have you lost
12 any time or been away from work at all?

13 A No time.

14 Q You continued to work continually?

15 A Yes.

16 Q Under what circumstances or how did you get
17 a job at Federal?

18 A Federal, I went there and spoke to the plant
19 manager which was Dick Reese, Richard Reese. I spoke to
20 him and told him where I was working at that particular
21 time and what companies I was working for.

22 He told me to come back and spoke to the
23 super, Jimmy Manor, actually his correct name is Vincent
24 Manor and I spoke to him and he told me to come in. That
25 I think was -- that was before I left M & E, so I told him

1 arjw 12

Mitchell-cross

2 I wanted to give them a few days notice.

3 So that Friday, in that same week, that one
4 week period, I started at M & E, I actually got two jobs
5 in one week.

6 Q While you were working in M & E you were
7 talking about an additional job at Federal?

8 A Right.

9 Q Bargaining for a job at Federal?

10 A After I left M & E.

11 Q You gave M & E some days notice?

12 A A few days notice.

13 Q You left of your own accord?

14 A Yes.

15 Q How did you know about the job availability,
16 the job opportunity?

17 A At Federal?

18 Q Yes.

19 A I know something about Federal when I was
20 at Brooks in the beginning. I heard they are doing good
21 overtime so I wanted a little gravy. So I went and
22 applied for the job and made it.

23 Q Is that the normal regular way to your
24 knowledge that other journeymen in 28 get their jobs too?

25 A Most of the time.

2 Q Go and apply at a shop with gravy, if there
3 is any gravy?

4 A If there is any. But most of the time it
5 is that way.

6 Q From shop to shop?

7 A Shop to shop.

8 Q Are you familiar with the shop list 28 puts
9 out?

10 A True.

11 Q You use this and the fellows use that shop
12 list?

13 A Most of them use that to get directions.

14 Q Where the places are located?

15 A Right. That is what I did.

16 Q You didn't have any trouble getting a job?

17 A No trouble.

18 Q Any other black journeymen that had trouble
19 getting a job like that?

20 A No, because one of the other guys worked with
21 me.

22 Q You brought him over with you?

23 A Right.

24 Q Since that time, had you, since 1969 had you
25 had trouble getting a job?

1 arjw 14

Mitchell-cross

2 A It is a little slow but he got laid off and
3 he got another job.

4 Q Right away?

5 A Yes.

6 Q Since 1969 to the present you mentioned four
7 people, black members, who got jobs right away, working
8 full-time, is that true?

9 A True.

10 Q Never been any difficulty about jobs?

11 A No.

12 Q Never found any resistance, held back from a
13 job because of your race or national origin?

14 A Particularly from me, I could say for me
15 because I felt I was one of the sons of the family.

16 Q They treated you very well?

17 A Very well.

18 Q To you knowledge, other black men were
19 treated very well?

20 A Very well.

21 Q No question over overtime and benefits?

22 A No, not at all.

23 Q When you came to Federal in 1971, did you
24 work inside or outside?

25 A Inside, worked on assembly, assembling duct,

1 arjw 15 Mitchell-cross
2 putting it together.

3 Q The thought occurred to me, Mr. Mitchell,
4 you became a member in 1969, did you participate in the
5 Union matters and affairs of Local 28?

6 A Rephrase it please.

7 Q I will withdraw the question.

8 You told me you were hired in Federal in
9 1971.

10 A Yes.

11 Q I asked you did you work inside or outside
12 and you said inside?

13 A At Federal?

14 Q Yes.

15 A Yes.

16 Q What work did you do when you first came in
17 in 1971 to work?

18 A I was assembling, putting fittings together
19 inside.

20 Q How long did you work as an assembler?

21 A Worked there for, I think about two or three
22 months.

23 Q Other people working with you assembling?

24 A Yes.

25 Q How many people worked with you in assembly?

1 arjw 16

Mitchell-cross

2 A Federal had then, I think, about 20 or 30
3 head of men probably just assembling.

4 Q After your two or three months, did there
5 come a time when you did some other work?

6 A That is a question, the summertime you know,
7 the cutter went on vacation and Manor puts me on the bench.

8 Q The bench is what?

9 A The head cutter's bench, the bench I am on
10 now.

11 Q What does a head cutter's bench?

12 A Starts working on big fittings and stuff.

13 Q Did there come a time you worked someplace
14 else?

15 A Yes, after that particular time, I found out
16 I could actually do cutting and had good speed, I was
17 like working on different benches and he gave me another
18 bench next to the office.

19 Q This head cutter's bench, how long did you work
20 there?

21 A For two weeks time he was on vacation.

22 Q What did you do at that bench?

23 A I was turning on some -- I'll put it this
24 way, I was more or less on test then.

25 Q A trial basis?

1 arjw 17 Mitchell-cross 1581
2 A Yes. If I did good, I could remain to cut
3 and if I didn't I had to go someplace else.

4 Q Did you succeed?

5 A I succeeded.

6 Q You say after two weeks vacation trial period
7 you went someplace else, another bench?

8 A Another bench.

9 Q What bench?

10 A Another bench over there on the side, cutting
11 fittings.

12 Q How long did you remain then at that cutting
13 bench?

14 A A while and then more or less change around,
15 gave me a bench right next to his office.

16 Q How long did you remain at that bench, if
17 you remember?

18 A Let's see, I would say a month, few months
19 and then changed cutters around to different benches and
20 gave me another bench, a larger bench.

21 Q You are working on the bench, did you do
22 the same kind of work?

23 A Right.

24 Q Cutting?

25 A Right.

1 arjw 18

Mitchell-cross

2 Q And you just changed your bench or where you
3 were located?

4 A Right.

5 Q Doing about the same work?

6 A That particular bench after I left Harter's
7 bench, I was put on a bench that is very close, not too
8 large a fitting but on the small side.

9 Q A little different?

10 A No, the same work, but smaller. In other
11 words, he gave me a larger bench thereafter I could do
12 quite big work.

13 Q Have you done, since that time to the present
14 day, any other work at Federal other than this bench
15 work?

16 A Yes, when things got slow we --

17 Q When did they get slow?

18 A Last year or the year before last.

19 Q Could we tie that up in time? Do you remember
20 going on a six-hour day?

21 A It was before the six-hour day.

22 Q It got slow?

23 A Right.

24 Q We already have record testimony that the
25 six-hour day started on October 31, 1973.

1 arjw 19

Mitchell-cross

2 A Right.

3 Q With this point in mind, can you indicate
4 when it got slow as far as you were concerned at Federal?

5 A I think I was outside for about three or
6 four months.

7 Q About three or four months before the industry
8 went on the six-hour day your job was changed from the
9 bench to something else?

10 A Right. Things got slow in Federal.

11 Q To what job were you assigned and did you
12 perform?

13 A I was assigned to Job 62, outside, on 41st
14 Street and Third Avenue.

15 Q What kind of work, a building?

16 A A big Blue Cross building I think it is,
17 office building.

18 Q What kind of work did you do there?

19 A I was installing fittings and working on the
20 radiator enclosures, the covers for the convectors. We
21 put a lot of them on.

22 Q Were you assembling those on the job?

23 A I had to assemble on the job on the wall,
24 because the assemblers already did their part of the
25 work. I had to make sure this color fit neat.

2 Q What other work if any did you do outside
3 at that job?

4 A I installed duct.

5 Q Any cutting done outside?

6 A No, very little cutting, cut a hole out of
7 something -- not much cutting, not that you cut a stitching
8 up.

9 Q Any other kinds of work?

10 A Installing duct and rotating around. We
11 was working as a composite crew.

12 Q What kind of rotation did you do, Mr. Mitchell?

13 A We helped steamfitters put the units around
14 in the computer rooms. We were working as a composite
15 crew.

16 Q What do you mean by composite?

17 A Half and half steamfitters and sheetmetal.

18 Q Working together?

19 A All worked together.

20 Q Any other kinds of work you did on the job
21 in addition to the composite crew?

22 A No more than that. That is about all.

23 Q How long did you work on the outside at that
24 job?

25 A I think I was out there three months.

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